

FTC MOBILE CRAMMING ROUNDTABLE
TRANSCRIPT
SEGMENT 1
05/08/13

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

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

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

We want to remind everyone that we're still accepting comments on the workshop. So if you'd like to submit them please go to our workshop website, which is www.ftc.gov/bcp/workshops/mobilecramming. And there's instructions for submitting comments electronically. We will also be posting a copy of today's transcript on our roundtable website if you'd like to go back and look at that.

Before we get started, I have a few housekeeping matters that we need to go over. First, the bathrooms are directly across the entrance, past the security desk to the left. Anyone that leaves the building without a security badge will have to go back through security on their way in to get reentry into the conference center.

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

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

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

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

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

And it is an honor for me to serve as a commissioner at an agency that is recognized for outstanding employees. That our agency's mission is to protect consumers means that the American public is especially well-served by the skill, dedication, and perseverance of its employees. And today's event is an excellent example of the great work done by the FTC workforce to advocate for consumers.

So the FTC's interest in mobile cramming stems from our broad mandate to protect consumers from unfair and deceptive practices in the marketplace whatever the medium. Cramming has been a huge problem on landline phones for years. And the commission has brought over two dozen cases to stop these practices and return money to consumers.

Now the problem is emerging in the mobile marketplace. And we need to shine a light on this troubling and growing practice to protect consumers and to allow innovative mobile services to flourish. Just recently, we obtained a court order that halted an alleged mobile cramming operation from placing unauthorized charges on phone bills, and also froze the defendant's assets for possible refunds to consumers.

So the FTC's complaint alleges that Wise Media and its principles charged consumers \$9.99 a month without their knowledge or permission for horoscope alerts, flirting tips, and love tips that were delivered via text message. This was the FTC's first case against alleged mobile crammers, but it's likely not to be its last.

Indeed, we are aware of thousands of consumer complaints about unauthorized charges on wireless bills. And we believe that these complaints may well underrepresent the problem, or underreport the problem. From surveys done in the landline cramming context, we know that many consumers are unaware that third parties can place charges on their phone bills.

We also know that consumers often fail to spot unauthorized charges on their bills. They may simply look at the overall bill amount and pay in full without doing a line by line review. Or they may read the bill and fail to spot the charges because they're buried deeply within the bill or listed in generic sounding categories, such as premium services.

In fact, in Inc.21, which was one of our many landline cramming actions, a survey showed that only 5% of consumers were aware that they had been billed for a defendant's product. And 97% said that they had never agreed to those purchases. So we'll keep on bringing cases.

But we also want to explore the problem from a more systematic perspective. Now the mobile marketplace is growing rapidly and offers incredible opportunities for consumers to shop and make payments through their mobile devices. As the mobile marketplace grows, we don't want mobile cramming to grow with it. Therefore, we are taking this opportunity to assemble key stakeholders to discuss how mobile cramming occurs and how we can stop it, while allowing legitimate mobile payment models to develop and flourish.

Some of our staff had the pleasure of participating in the FCC's workshop on this topic last month. And we're pleased to continue the discussion here. We have a diverse and distinguished set of panelists to help us do that. Our panelists include consumer advocates, technologists, and industry members. We are also fortunate to have other law enforcers, staff from the Senate Commerce Committee, the FCC, and the international community here to share their perspectives.

I want to thank all of our panelists for being here today. We've truly assembled an all-star team. And I'm sure we will all benefit from their knowledge. There are three panels today, each focusing on different aspects of the mobile cramming problem.

Our first panel will examine third party billing in general, as well as how mobile cramming occurs. In our second panel, we will discuss current strategies to reduce mobile cramming. Finally, our third panel will discuss new strategies that might be deployed to address mobile cramming.

As the nation's premier consumer protection agency, the FTC is committed to staying ahead of the curve by understanding and identifying harm to consumers from mobile cramming and other emerging technologies before it becomes more widespread. I hope that after today we will all have a better grasp of the benefits and potential harms that can arise from mobile third party billing, additional protections that industry might implement to prevent those harms, and what role government should play as we move forward.

We really hope to foster an environment that allows innovation and third party billing to grow, while minimizing harm to consumers from cramming. And when we at the FTC see issues arising from mobile third party billing, we will continue to act. So once again, welcome to our workshop. Thank you.

STEPHANIE ROSENTHAL: And now we'll get the rest of the day started. We'd like to have the first panel come up to the front of the stage. Thank you so much for that great opening.

LARISSA BUNGO: Good morning, everyone. I'm Larissa Bungo. I'm the Assistant Regional Director in the East Central Region, which is located in Cleveland, Ohio. It's my pleasure to be here today to co-moderate panel one. I'm here with my colleague, Andrew.

ANDREW SCHLOSSBERG: Hi, I'm Andrew Schlossberg. I work in the Mobile Technology Unit here at the FTC.

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

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

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

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

We all share the same goal. Nobody wants unhappy consumers, consumers who've been misled who haven't consented to the services that they receive and are charged for. On the other hand, many of these services, as we'll be talking about, provide some very valuable services, are very popular. And third party billing provides a new and competitive choice of billing, particularly for many unbanked individuals.

KATE WHELLEY MCCABE: Hi everyone. My name is Kate Whelley McCabe. I'm an Assistant Attorney General at the Office of Vermont's Attorney General. And I'm here to give a consumer perspective. I'd like to thank the FTC for having me and for gathering us to talk about this important issue.

And if you haven't noticed already, please notice that I'm the only person on the panel who's not a VP or a CEO. So in case I never get another word in edgewise, I want to give you my bottom line. And that is those folks who are trying to gauge the magnitude of this problem based on complaints are grossly underestimating the problem. And I'll give you some information to back that up.

Vermont, albeit a small state, we have fielded a couple dozen complaints about wireless cramming over the last seven years. That's not insignificant, but even for Vermont that's small. However, I'm happy to announce that today the office is publishing Mobile Phone Third Party Charge Authorization Study, a systematic consumer survey that we conducted in the fall to determine just how large the problem was.

And I'm going to give you a couple of statistics. Out of the 802 respondents to 2,400 mail surveys, we discovered that according to consumers 60% of third party charges in the months of August and September of 2012 were crammed. That is to say, consumers said they did not authorize those charges.

In an even more startling statistic, close to 80% of the consumers reported that they did not understand until we informed them that they could be charged for third party goods and services

on their mobile phone bills. So my takeaway is you can't know what the problem is until you talk to consumers. And by talking to consumers, I mean reaching out proactively not just reacting to the complaints.

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

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

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

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

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

Even more troubling than that is that if you then take the data from our friends at the Vermont Attorney General's Office and also data from the Illinois Consumer Utility Board they found between 40% and now more than 50% of charges are potentially fraudulent. And so by our estimate we're looking at a problem of between \$643 million and more than \$730 million annually in potentially fraudulent charges on wireless phone bills.

So we think it's a very big problem. We're very happy that the FTC is looking at it today. And we're happy to be here.

JIM MANIS: My name's Jim Manis. I'm the founder and CEO of the Mobile Giving Foundation now known as the BBB Mobile Given Foundation, now that we're in partnership with the Council of Better Business Bureaus and the primary charity watchdog, the BBB Wise Giving Alliance. I'm here to talk about how wireless technology applies in doing good.

But I'm also here because I think I have a little bit of background that's relevant. Previously, I also reset the Mobile Marketing Association and served as its global chairman for three years.

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

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

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

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

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

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

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

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

And in Korea, it's about a \$4 billion market. And we process half of those there. And in the United States, we're processing roughly almost \$100 million run rate in what I call e-commerce type of mobile payments. So if you think of Match.com, or think of a dating site, or think of Facebook. If you're on there and you want to purchase credits you, of course, can charge it to your mobile account.

It's a very appealing way of transacting, especially for the millennial demographics, and will continue to be. Mobile payments has a broad appeal, but specifically has an appeal for the younger generation that has grown up mobile centric. And the issue of cramming, which from our view is a burden that we've had to embrace both with the consumer and with the carriers, deflects a little bit from the potential and the opportunity that exists in what I would call legitimate mobile payments.

And since we've launched, we've actually had a zero tolerance and zero acts of cramming and other, what I would call, nefarious things on the mobile bill. So I'm happy to discuss that in a little further detail.

LARRY BRYENTON: Good morning, everyone. I'm Larry Bryenton from the Canadian Competition Bureau. And thank you to the FTC for the invitation to allow me to be here today, and to give I think a bit of an international perspective on the issue that we're going to talk about today.

Just to give you a bit of an overview, the Canadian Competition Bureau is responsible for the Competition Act in Canada, which is a general law of application that applies to virtually all businesses in Canada. And it has competition and consumer protection provisions.

And what our role is in the branch that I'm responsible for is looking at issues relating to false or misleading issues. Our priority focus is in the digital economy area. And as the US experience shows, Canada's similar. There's an explosive growth by the use of online and mobile platforms and smartphone adoption by Canadian consumers. And while it's bringing a lot of advantage to the Canadian marketplace it's already exposing our consumers to risks and harm.

And my role today is to talk to you a bit about our Canadian legislation, some of the activity we're taking. But also to give you a bit of a perspective on the international front of how other agencies around the world are seeing this problem, and some of the challenges they're dealing with as well. So on that point I'll turn it back to our moderator. Thank you.

ANDREW SCHLOSSBERG: Thanks, Larry. So just before we get started with questions, I'm going to ask some questions to specific panelists. But if you want to chime in just go like this with your table tent card and we'll call on you.

So just to get started just for level setting, this may be for Jim Greenwell or Jim Manis, how large is the third party wireless billing ecosystems in terms of revenue? And what proportion of consumers get third party charges on their bills? Either one of the Jim's want to take that?

JIM GREENWELL: Want me to take the first?

JIM MANIS: Go for it.

JIM GREENWELL: I'll take the first salvo. So revenue is a relative term, right? So we break down the financials typically in our space from TPVs, Total Processing Volumes. And then

there's perhaps a term called gross revenue, which is the revenue you'll take. But then there's a percentage that goes to the carrier, and then the net revenue portion.

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

Now, of course, the carriers don't want too large a number of players within their network. They're obviously very protective of the network. That's their core value. So they are letting some big players on. So if you mean independent third party processing volumes right now in the United States, I would venture to guess-- and this is non-PSMS and so I distinguish between PSMS, which is on-deck.

So you're getting horoscope. You're getting music, a ringtone, some sort of wallpaper, verses I'm signing up for Match.com or I'm buying Facebook credits. And those are two distinct types. I would say it's probably in the \$300 million processing volume range and growing very, very rapidly. It's getting some wide adoption as we go along.

JIM MANIS: Mike might be able to address the premium SMS space better than me at this point of the game, but my view of the premium SMS is it's actually been shrinking significantly over the last few years. The number of players defined by the authorized aggregators who can place a billable event on your phone bill across all of the wireless operators has declined significantly. And I think there's two left in the space today.

And maybe if there's other carrier representatives in the room, you might want to address that. I think that's largely due to a number of measures that the industry has taken both through CTIA, through DMMA, through the individual carrier activity, to constrain that space.

With respect to Mobile Giving, there's approximately 2,500 charities that have been vetted. There's a requirement upfront that a charity has to meet standards above and beyond just simply being an authorized 501(c)(3), public 501(c)(3). So there's a vetting process. There's probably 2,500 charities that have gone through that vetting process.

And the result of that vetting process has enabled probably 8 million-- I'm going to give you a ballpark figure here, rather than having a figure coming in. But it's pretty close, about 8 million individuals across this country. Less so in Canada.

So, sorry. I'm going to talk to the US. But we also have Mobile Giving Foundation of Canada, which is well-placed. They are doing similar things. And we act in the same fashion up there through a controlled platform. So we don't see this type of issue in the giving space at all where we are.

But that's a lot of individuals who've actually used premium SMS to make a donation to a charity. And through that process they've raised north of \$70 million in donations over that period of time in \$5 and \$10 increments. So that's a lot of activity, if you will.

And then more important for the charities is that the individuals who contribute through Mobile Giving tend to be new contributors. So from a charities perspective, they're trying to find ways to acquire new supporters of the causes. They're trying to use wireless technology as a means to educate individuals. And frankly, they're trying to get away from the likes of old guys like me and finding younger people who will support their cause over a longer period of time. So it's been highly beneficial that way.

KATE WHELLEY MCCABE: I'm just wondering, we've heard about the non-PSMS volume. Do you know what the PSMS volume is?

JIM MANIS: Well, my comments were related to be premium SMS.

KATE WHELLEY MCCABE: I'm sorry. I was questioning Jim Greenwell.

JIM MANIS: Oh, this one. Yeah, sorry.

JIM GREENWELL: Thanks for asking.

JIM MANIS: Separate the Jim's here.

JIM GREENWELL: I wanted to expand. If I were to guess-- I've seen some volumes on some carriers-- I heard the \$1.5 billion number. I think it's still actually bigger.

I would put it between \$2 to \$3 billion knowing what percentage the carriers still get in revenues and knowing what other premium SMS third party processes are still out there. So I still think it's a \$2 to \$3 billion market. And as Jim Manis said, it's declining. But still, it's mature.

JIM MANIS: I should just make one more note on the Mobile Giving Space relative to the carrier activity, since Jim referenced the revenue share that occurs on the commercial side. The carriers step up to the philanthropic piece of premium SMS on a no-cost basis.

So where the normal transaction would have a revenue share between the content provider, if you will, and the carrier, that does not exist in the philanthropy space. Every dollar that's collected by the wireless operator is passed through us to distribution back to the beneficiary charity. So there's zero cost that the carrier captures.

ANDREW SCHLOSSBERG: Let's step back for one second. We assume people know the players in this space. Let's just talk about that. Mike, what is the process for placing a third party charge on a mobile phone bill? And what types of companies are involved? We've mentioned them a little bit, but I just want to make sure everyone understands, we're on the same field here.

MIKE ALTSCHUL: Well, we'll start with the carrier because that's the company that bills the customer and has the relationship with the customer, and who the customer should contact if there are any questions or any unauthorized charges associated with a customer's bill. The carriers have contractual relationships with companies that Jim referred to called aggregators.

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

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

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

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

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

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

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

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

And now I understand at least there's two carriers on the commercial side of the business that have put in consent management platforms to grab that initial opt-in away from that content

provider to bring it back not to the aggregator, but all the way back to the carrier, I think, as part of the broader attempt at managing this overall space. So the opt-in and the visibility to the consumer's initial action and intent is critical to making sure that we have full transparency to what their objective is.

ANDREW SCHLOSSBERG: Great. Larissa?

MAUREEN OHLHAUSEN: Thank you. I'd like to ask a few questions just introducing the topic of mobile cramming. First, I'd like to ask Kate and John and Larry if you could talk about whether you think consumers know third party charges can appear on the phone bill.

KATE WHELLEY MCCABE: I'm sorry, what is the question?

LARISSA BUNGO: Whether you think consumers are aware that third party charges can appear on the phone bill.

KATE WHELLEY MCCABE: So one of my initial statistics was about just that question. We asked a number of questions of our consumers, and two of them are interesting and go to that point. The first was a question about did you understand that third party charges could appear on your phone bill. And we had a response rate for no in the range of 80%.

So 80% of the consumers that we surveyed said that they did not realize they could be billed on their mobile phones for third party goods and services. Another statistic that goes to that question in a different way is that 55% of the consumers that we surveyed said that they did not recognize that the charge was on their bill, any charge at all, for \$9.99, until we asked them to look at their bills by way of the mail survey.

So there were certainly consumers that noticed the charge that didn't understand what the origin of the charge was. And I did supply Andrew with a couple of examples of bills. And I'm not sure if those made it to a table outside yet.

ANDREW SCHLOSSBERG: No, not yet.

KATE WHELLEY MCCABE: OK. But they're going to be on your website?

ANDREW SCHLOSSBERG: Yes.

KATE WHELLEY MCCABE: Some redacted examples of consumer bills that will show you how it is that a consumer might see the charge, but not understand where it's coming from. I wanted to speak to something Jim Manis said about where we're seeing the problem and we're not seeing the problem.

And through this survey, through another survey that the office conducted, through talking to consumers that have complained, and through collecting complaints that have gone into other a AG's offices all over the country, I have probably seen the stories of about 2,000 consumers. And

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

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

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

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

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

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

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

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

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

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

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

And why do we do that? That's because these bills often are multiple pages. I don't know if any of you have kids and multiple lines. There are maybe a dozen pages in a bill. Who's going to look at that?

On top of that, you have carriers who are increasingly pushing auto bill pay, paperless billing. So it's even easier for consumers just not to think about it. It's just another charge on your credit card bill. So this is why mobile cramming is so easy and so lucrative for scam artists, small charges misleadingly labeled on bills that people don't read. It's almost a perfect scam for them.

So I think we saw, when we were looking at landline cramming, this exact problem. The consumers don't even know that their bills can be used as a credit card essentially. And what's worse is mobile bills don't give you the same protections that credit cards or debit cards do.

You can't dispute a charge and be protected by Reg E, for example. You're basically at the mercy of your carrier to take your word for it and take the charge off your bill. So it's very concerning to us. I think the double opt-in that was discussed has its flaws.

I think you see, for example, companies that are putting negative options into the confirmation of text messages, where it's "reply stop or you will be charged." Most people just ignore the charge. I think the New York Times did a great couple articles on this last year about Wise Media and how they were using negative options.

So we think it's a very large problem. We're concerned that the counter measures that the MMA and others have in place to protect this aren't actually doing what they want them to do. And we think that there needs to be some serious thought given to what regulators can do to address the problem.

LARISSA BUNGO: Thank you. And I know we'll be exploring the measures that have been taken in the second panel. But Mike if you'd like to respond from an industry perspective?

MIKE ALTSCHUL: Thank you. We haven't really spoken about the double opt-in for premium messages. And this is consent. And it's consent at the time of purchase.

And I just received the Vermont survey last night. It was just being released today, and we received a courtesy copy. And there is this statistical quirk where twice as many people responded that they remember authorizing the charge than responded that they knew that they could be charged.

And the reason they remember it is at the time any customer is opting in or selecting a premium message charge, that's a message that we bill in addition to the actual message charge, there is a second step that the customer has to take to approve that charge. And that is to affirmatively text back "yes" after receiving a short text message that's displayed all on a single screen of a user's wireless device identifying the amount of the charge, identifying whether it's a one time or recurring charge, and what the service that's being purchased is.

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

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

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

LARISSA BUNGO: Thank you. Go ahead, Jim.

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

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

So if you initiate a transaction by sending the key word to a short code, you will receive an immediate text message back asking you to confirm. In this case, to confirm your donation to the charity reply with the word yes. Right? And then it's states terms and conditions with a little mini URL.

"Reply help for help, stop to cancel, message and data rates may apply." You reply "yes." And then you receive a thank you message back. "Thanks." And it notes the amount of charged, right?

I could be \$5, \$10, in this case it's a trial for \$25, charge to your cell phone bill for this particular charity. "Info at--" again we provide a little mini URL-- "reply help," and repeat the standard message. So the notation here-- and the notion that's consistent not just with philanthropy but with any kind of premium interaction with the consumer-- is to provide advice to charge.

Let the consumer know and confirm the action that they initiated. Let them know that the result of that action will be an appearance on their phone bill. . And we'll provide access for terms and conditions and other means to seek additional help and information.

So just as a note in terms of the message flow that accompanies that transaction, that's an important message flow. And that should serve to a link then to your point, Kate. When they receive the bill, they can identify that charge on their bill.

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

JOHN BREYVAULT: Yeah. I would just point out again that we're talking about commercial messages here that are the problem with cramming. Charities are different from commercial crammers in the sense that their intent is not to deceive you.

A commercial scam artist, who is engaging in cramming fraud, their intent is to deceive you. So to the extent that somebody might opt in and agree to have something charged for a charitable contribution, that's fine. And I think Kate mentioned, in their review of the bills, that they did not see a single instance where consumers had a problem with the charitable giving.

The problem is that crammers are out there who ask you to put, for example, your cell phone number into a website that said, do you want to get free horoscopes? Or a joke of the day? Or random fact of the day?

And by doing that, that constitutes the first part of the opt in. And then the consumer then receives the second text message. And, again, it's the negative option there that is the problem. Because the consumer often just ignores that.

They think it's spam text. People get them all the time. And so, by ignoring it they are agreeing to those charges, even though all they thought they were doing was putting in their cell phone number to try and get into a website that they wanted to see.

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

LARISSA BUNGO: Thank you. Kate.

KATE WHELLEY MCCABE: And I'd like to make another distinction. And that is I think what we're hearing on this panel is that there is a gap between what is supposed to happen and what actually does happen. So the predominant consumer narrative is, I was charged \$9.99 on my phone bill. It's been happening for several months.

And either A, I had never seen this company name before, or never did any activity that would have opened me up, never put my phone number on the web, wasn't getting spam texts. I have no idea where this is coming from, A. Or B, I remember getting some spam texts. I don't really know what they were about. I deleted them.

Or, yeah, I signed up online for some free recipes, but I didn't know I was going to be charged for anything, let alone \$10 a month in perpetuity. So I think there's the commercial and charitable distinction, about the motivations of the actors that are behind the generation of those charges. But there's also a distinction between the rules and the folks are aren't playing by the rules.

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

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

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

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

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

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

From a philanthropic standpoint-- and I appreciate and highly value the distinction that everybody on the panel's making between commercial and philanthropy-- the connection that I'm making between the two is just simply trying to understand the overall space. Because I don't want the philanthropic piece to be negatively tainted. And if the premium space goes away, guess what.

We go away, too, right? So there is a threat, if you will, to us. And mobile apps don't pick that up because while you as a consumer can engage with all types of content on your smartphone, what you can't do on your smartphone today is to make a donation to a charity using a native in-app billing solution, right?

Remember the big address blottings that you get when you use simple technology like SMS across the reach of virtually every handset? And now you end up breaking that by looking at apps that are designed for IOS, on Android, on Windows, others. And now you have to educate the consumer around how do you discover that, how do you download that, how do you use that.

And then if it's charity related, and if you're trying to engage a supporter in your charity, Apple doesn't, nor does any platform, allow for their native in-app billing solutions-- in Apple's case iTunes-- to process a donation, right? So that goes out the window.

So what's the default back on an app for charitable billing? It's carrier billed premium SMS, like what we do for the Microsoft HelpBridge app. So it all comes back to that as a solution. So I do think the apps have had a huge, positive impact in terms of changing the way consumer behavior is. But on the billing aspect of it, there's still a lot of shams.

MIKE ALTSCHUL: Although Jim's talking about the charitable side, on the commercial side, in-app purchases of downloadable apps are something that is increasingly popular, particularly for games. And tokens used with games look for a lot of other innovative services. And they are not billed by the carrier.

But they are billed to the customer's iTunes account or some other account that's been associated through the app store and in-app provider. And it's up to the app store and where they curate the apps and the charges they process to protect consumers in that space.

ANDREW SCHLOSSBERG: Jim Greenwell?

JIM GREENWELL: Sure. Well, just a couple of observations. Jim, I think if Kate ever leaves law you've got a good chief marketing officer there with the opening there on the Vermont giving.

Secondly, the native apps versus HTML5. We are actually processing some high volumes for a major storefront. And it goes back to something John said, resonated with me, it's really the intent. Right now, as a head of a commercial entity, I'm reluctant to put the burden of fighting cramming on the consumer.

We need to protect the consumer, right? It's interesting that by our own admission we said, hey, I received these texts as consumers. I just thought it was a spam text, so I just deleted it.

It's a burden to the consumer to have to navigate through some of these rather complicated texts. And while cramming and other types of things haven't occurred on the philanthropic front yet, I would say that the possibility's always there because of the intent behind somebody's purpose.

So whether it's app, whether it's the work horse of premium SMS, it's all the intent behind the merchant. The old stories were a merchant would set up, cram the phone bill, make a couple million dollars. They'd get caught. They'd go up, set up company y next.

A lot of those things have changed. But what's really turning out to be effective now is having-- most cramming occurs where there's subscription, I believe. And if you put the burden of monitoring that subscription, either to the carrier or to the third party provider, you put ownership there, then I think things decrease dramatically. But it's all about the intent of the merchant or the content provider. And it's the ownership of the responsibility, is my take.

LARISSA BUNGO: Thank you. I have a follow up question along the lines of where you were headed. What have we learned? You talked a little bit about landline and the wireless cramming. What have we learned, what lessons have we learned from landline cramming that are applicable as we look at the marketplace now, the mobile space?

MIKE ALTSCHUL: I'm happy to take a stab at it. We've learned, sometimes proactively, sometimes the hard way, the importance of vetting the person or entity behind the content upfront. So that to obtain a short code in the first instance that enables this kind of marketing and service, CTIA on behalf of the industry actually vets and confirms the identity and legitimacy of the company that's applying to provide the content before any short code is ever issued.

So first, we have to know who we're doing business with, know they're a legitimate business. They have a real address, real people, real entity, know how to find them. Second, we found the importance of media monitoring as well as message flow monitoring. Media monitoring, to make sure that there aren't deceptive claims.

A few years ago, the Federal Trade Commission had a very valuable workshop on deceptive advertising where disclosures violated all sorts of long existing Federal Trade Commission advertising practices involving the use of the word free and disclosures not being in sufficient size type or contrasting colors and fonts. That's something that the industry does, again, for every code, every month, as well as monitoring the actual message flows.

And perhaps most important, each of the carriers often on a daily basis will be monitoring the customer calls, inquiries, complaints they receive to quickly identify any particular short codes or campaigns that are generating calls to their customer service representatives. So they can act proactively to shut down those programs, and proactively reach out, identify other customers who may have charges from that same content provider, and remove them from their bills if that's what the investigation that we're dealing with a real fraudster determines.

ANDREW SCHLOSSBERG: Let me just jump in quickly. We have a couple minutes left in the panel before Q&A. Q If you have any questions, just fill out your card. It should be in your folder. One of our representatives will grab them from you. A couple minutes left here before we get to Q&A.

LARISSA BUNGO: I'll go to Kate and then to John.

KATE WHELLEY MCCABE: Thanks. So we've had pretty extensive experience in Vermont with landline cramming. And what we've learned is that requiring notification to consumers does not work. We had a law on the books for a decade that required landline carriers or the vendors purportedly selling third party goods and services through the landline network to notify consumers by mail when they were getting a third party charge.

So the parallel to that in the wireless space is the text message notification. That law did not stop cramming. I'm not even sure it really slowed cramming down on the landline side in Vermont. Such that, when we did some since consumer surveys in Vermont about landline cramming, we found that the numbers of unauthorized charges were more in the 80% to 90% range.

And that's a matter of public record already through the testimony of my colleague Elliot Burg in front of Rockefeller Senate Commerce Committee last year. So what we did is we made it unlawful, except for in a number of very narrowly tailored circumstances, for a third party charge to even make it to a landline consumer's telephone bill.

Now, this is not the same space. And I think the reason this is not the same space is that we have some good things, some really good things happening in the mobile space. And so I just want to take a moment and recognize that it's a hard place for a regulator to be in, because it's PSMS that we're seeing the major complaint volume on.

And in fact, it's the lion's share of the third party charge market anyway. But yet, it's PSMS, we've all just learned, that is the sole vehicle for this charitable giving. So that's a hard place to be in. We need to learn how to live with this premium text messaging. But we need to also protect those consumers that are vulnerable to the commercial crammers.

LARISSA BUNGO: John?

JOHN BREYAULT: Yeah. I think what we could learn from the landline experience essentially is that relying on the industry to correct the problem is probably not going to work. I think if you look back at the Senate Commerce Committee's hearing on landline cramming last year, Senator Rockefeller said it best. He said, you know, you guys were in here 10 years ago telling us you would fix the problem.

Landline cramming is a problem that began in the late '90s, early 2000s. And, under pressure, the industry said, we're going to fix this. Let us do this ourselves. 10 years later, we still see billions of dollars in landline cramming charges.

And it wasn't until there was legislation proposed and the carriers finally were convinced that there was something serious going to happen to them did they take the right step. And most of the landline carriers decided they would just stop doing third party billing for non-telecom related, so-called enhanced services. And I think you've seen that that action has actually had a demonstrable impact in reducing landline cramming complaint volumes.

So I would just caution to say that relying on industry self-regulation to address wireless cramming, I think, runs the risk that we're going to have another 10 years of cramming fraud that is going to affect consumers. So I would just say that I think it's important that we try and nip this in the bud. I think the Wise Media case is really just the tip of the iceberg. And I think it demands more aggressive action by regulators to address the problem that we had in the landlines space.

LARISSA BUNGO: Thank you, John. I'd like to give Larry an opportunity to respond. And also Larry, I was hoping you could talk about the global prospective. Let us know whether this is only an issue in the US or if you see it elsewhere.

LARRY BRYENTON: Sure, thank you. I'll just pick up on the point in terms of the self-regulation and sort of the pitfalls or the advantages of that. As I mentioned in my opening

comments, the Competition Bureau's an independent law enforcement agency. And we strive to foster competitive and innovative marketplaces and insure informed consumer choice.

What we've seen in the past year or so is that there's been a lot of concerns from consumers about the unwanted unauthorized charges on their mobile bills in the Canadian context. This led to spoiling s a court action last fall after a five month investigation where we filed against three of the major telephone companies in Canada and the Canadian Wireless Telecommunications Association, which is the industry association in Canada for what we believe is to be misleading content relating to the premium text delivery to consumers in Canada.

And we're looking for them to do a number of things in terms of the court actions. But what our investigation concluded is that the three mobile carriers that have somewhere in the neighborhood of 93% of the Canadian marketplace along with the Wireless Association facilitated the sale to their customers of premium rate digital content, such as quizzes, horoscopes, things of that nature, as we've already heard today, for fees that weren't adequately disclosed to their customers.

And in our view, the customers were misled into believing that the content was free, when invariably the case was the consumers were ultimately charged sometimes for one-time fee. Or, in a number of cases, for ongoing subscription or subscription trap-type situations where it could be significant charges to them. What we're looking for in terms of relief through the process is we're looking for full restitution to consumers as part of our ongoing court action.

We're looking for the companies to stop making any representations that don't clearly disclose the price and other terms and conditions applicable to premium rate digital content. And we're also looking for significant administrative monetary penalties in the neighborhood of \$31 million as relief from the court, as well as substantial corrective notice in the public domain to identify the problem and the corrective actions that take place.

I'm just sort of building on that what's happening outside of Canada, what's outside the US. We participate in international law enforcement for around the world. And the issue of mobile billing and bill shock is certainly an issue that has impact in a number of jurisdictions. Our colleagues in Australia are spending a lot of time and effort looking at premium rate issues, the United Kingdom as well. The European Union, there's a number of different agencies as well.

One point that I'd like to draw to is that there's a presentation that was brought before the Organization of Economic and Cooperative Development last fall by a group called the London Action Plan, which is a group of 28 law enforcement agencies that deal with customer protection issues and cyber-type problems-- did a fairly comprehensive report related to online and mobile best practices. And they looked at a number of different issues impacting on consumers in that space. But one significant area that they spent time working on was relating to mobile and mobile devices.

And they identified the risks associated with mobile and premium text type scams. So it's a good document, sort of outlines a bit of the structure, the conduct, and the problems that emanate from that, and just underscores the point that it's not just an American issue. It's not just Canadian

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

LARISSA BUNGO: Mike, a quick response?

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

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

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

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

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

ANDREW SCHLOSSBERG: You want to respond?

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

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

And I do recognize that the carriers in particular and CTIA in particular have stepped up their mechanisms for catching some of these bad actors. So I think 1 in 1,000 being constant as more and more people go mobile and as more of us pay attention and more industry players pay attention, it may be perfectly reasonable for a complete rate to stay constant while there's still being a fairly large underlying problem. Thanks.

LARISSA BUNGO: Thank you, John.

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

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

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

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

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

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

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

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

LARISSA BUNGO: Can anyone speak to that?

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

JIM MANIS: I don't know that number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You can read the narratives and see for yourself. But that had a frequency of 29. So received full refund, frequency 31. Received partial refund, 19. Provider helpful, 6. Provider not helpful, 6.

So take a look at this document, please, when it's a part of the public record. And you can judge for yourself. How consistent are the stories that consumers are telling? What is the story? And what do we need to do about it?

ANDREW SCHLOSSBERG: Great. Thanks guys. We're going to get into a couple minutes of Q&A from the audience. We have a bunch of questions that we received. And then we'll move on. So the first question-- I'll throw it out to anyone-- who in the mobile billing ecosystem, the carrier, the aggregator, or content provider, holds the data underlying a consumer's double opt-in? Mike, or Jim Manis?

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

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

JIM MANIS: We offer, by the way, access to the carriers if they want to see data on our platform. They can actually peek in and see that. But it resides in our platform.

LARISSA BUNGO: This is a question for Jim Greenwell. Can you confirm or clarify to your point that the phone may be used as a credit card? The question is, is credit issued? And if so, is the carrier issuing credit?

JIM GREENWELL: No, that's a great question. And it sort of converges a number of large metatrends, I would say. Simply put, no. The carrier does not carry the credit. The merchant, or the content provider in legacy terms, carries the risk.

Everybody's trying to figure out this lovely mobile device. Everybody is investing billions of dollars in trying to use the word wallet, and that's a very loose term. If you fast forward 10 years from now, there's no doubt that most of us will use this device in some form of transactions or mobile payments.

And the carriers with their restrictions, and the financial industry with their sets of restrictions, the last thing that the carriers want to do is get immersed in all the regulations that define the financial community. So no, they do not extend credit at all. And the content provider bears all the risk.

And by the way, the old PSMS rates-- I remember Puff Daddy, or P. Diddy walking around CTIA with his entourage 8 years ago. And the reason he was at CTIA was two-fold. One, he wanted to launch a virtual mobile network. But secondly, he was selling his ringtones and all the music he produced for \$1.99, whatever, and he was making a mint on it.

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

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

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

JIM GREENWELL: So perhaps the best way, and the simplest, shortest way to describe it is if there's a short code associated with it, that's typically premium SMS. If it's consumed on the phone, that's premium SMS. We talked about refund rates where we have, for example, on a couple carriers we have refund rates less than 1%.

And I think it's a portion of two things. One, it's a legitimate merchant. But two, we have what we call two factor authentication. We shoot a pin code for you to input to make sure that you're doing it. So the refund rates are low. And the way to describe PSMS is short code based. And e-commerce is more transacting without a short code other than a text being delivered for confirmation, or for a pin code.

JIM MANIS: But both are carrier billed.

JIM GREENWELL: Both are carrier billed. And that's the similarity.

LARISSA BUNGO: A question about-- what about sham charities? Are there protections against scam artists or commercial for-profit entities that use mobile phone bills to bill consumers?

JIM MANIS: There are. The Mobile Giving Foundation has a 360 degree view of when the charity comes in and when the money goes out. So protections are kind of the normal policing functions that we engage in quite heavily. And then they are mitigated by the fact that we require charities to meet standards before they even gain access to the system.

And that's part of our partnership with the Council of Better Business Bureaus and the BBB Wise Giving Alliance. So you require standards to be in that. So you know who the charity is going into the transaction.

We also monitor and we also participate in the CTIA monitoring in terms of how the charity promotes what's out there in the marketplace. And then when the carriers collect and remit, we'll remit directly back to the beneficiary charity. That's where the 360 degree view comes in.

LARISSA BUNGO: Thank you, Jim.

JIM GREENWELL: I'd love to do an informal poll, because there's so many things converging here. How many folks in here pay their mobile phone bill with a credit card on file, if you could raise your hand? OK. And of the credit cards on file, are they corporate or personal? How many have corporate accounts on file that pay for their phone bill? OK. Thanks.

It's interesting if Mobile Giving, if all of a sudden the corporation's giving and some other ones. But in the future, I think whether you have a credit card or an ACH, that whole notion of being able to transact on your phone is going to become more interesting if you have a credit card on file. And how that's going to be used in the future for mobile payment? And it'll present a whole other host of issues that we're not prepared to discuss.

JIM MANIS: It'll impact the demographics that use it, too.

LARISSA BUNGO: Thank you. I think we have time for just one more question.

ANDREW SCHLOSSBERG: One more question. This is for Mike. Is there a mechanism to monitor consumer complaints directly to the carrier?

MIKE ALTSCHUL: There are complaint websites, SMS watch. I'm not sure of additional ones, where customers do report. The very best place to ensure monitoring, once again, is for consumers to immediately call their carrier if they have any questions or see anything on their bill that they don't recall or don't believe has been authorized. The carriers then are able to track those codes and programs that are generating complaints.

ANDREW SCHLOSSBERG: Great. OK, thanks to the panel. We'll take a 15 minute break.

LARISSA BUNGO: Thank you, everybody.