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May 7, 2013

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

Re: Mobile Cramming Roundtable, Project No. P134803

Dear Commissioners:

The National Association of State Utility Consumer Advocates (NASUCA)<sup>1</sup> applauds the Federal Trade Commission's considerable efforts over many years to stop the cramming of unauthorized charges onto consumer phone bills. NASUCA also appreciates the Commission's assembling a roundtable of experts on May 8, 2013, to address mobile cramming.

Over the past several years, NASUCA has on five occasions submitted comments to the Federal Communications Commission (FCC) on the general problem of cramming.<sup>2</sup> Substantial portions of the NASUCA comments filed June 22, 2012, addressed mobile cramming in particular. A copy of those comments is submitted with this letter.

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<sup>1</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>2</sup> NASUCA Initial Comments in Response to Notice of Inquiry, CG Docket No. 09-158 *et al.* (Oct. 13, 2009), pp. 42-57; NASUCA Initial Comments in Response to Notice of Proposed Rulemaking, CG Docket No. 11-116 *et al.* (Oct. 24, 2011); NASUCA Reply Comments in Response to Notice of Proposed Rulemaking, CG Docket No. 11-116 *et al.* (Dec. 5, 2011); NASUCA Initial Comments in Response to Further Notice of Proposed Rulemaking, CG Docket No. 11-116 *et al.* (June 22, 2012), NASUCA Reply Comments in Response to Further Notice of Proposed Rulemaking, CG Docket No. 11-116 *et al.* (July 20, 2012).

NASUCA respectfully submits these additional observations:

First, as decision-makers consider mobile or wireless cramming, they would do well to remember lessons learned about wireline cramming.<sup>3</sup> The fundamental problem is the same in both cases. Cramming is classic consumer fraud: trying to get people to pay for something they have not in fact bought.

Press items over the past year about mobile text messaging scams suggest there are wireless business practices strikingly similar to the practices that allowed wireline cramming to flourish. Carriers receive substantial revenue from third-party billing, and this revenue may give the carriers an incentive to do less than is necessary to stop these illegitimate practices. When consumers complain, carriers may readily refund the charges and readily implement blocks. The refunds, however, do nothing to address the situations where consumers never realize or recognize they are being charged for these unwanted services. Such blocks do nothing to stop the cramming from occurring in the first place.<sup>4</sup>

Solutions should be implemented for *all* modes of telecommunications service. The solutions should stand the test of time in an environment in which technology changes but human motives do not.

Second, in terms of what industry might do, attention should focus on what experience suggests is the core problem – the need for adequate authentication processes.<sup>5</sup> As observed by the Senate Commerce Committee, phone bills have become a method of payment akin to debit and credit cards but without the protections provided by those cards.<sup>6</sup> There is a need to establish what the Senate Committee referred to as “a

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<sup>3</sup> See S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” 112<sup>th</sup> Cong., 1<sup>st</sup> Sess., Committee on Commerce, Science and Transportation, United States Senate (July 13, 2011).

<sup>4</sup> D. Lazarus, “FCC needs to stop ‘cramming’ on cellphones,” *Los Angeles Times*, Mar. 28, 2013, [http://www.latimes.com/business/la-fi-lazarus-20130329,0,2277464.column?page=2&utm\\_medium=feed&utm\\_campaign=Feed%3A%20ConsumerConfidential%20%28Los%20Angeles%20Times%20-%20Consumer%20Confidential%29&utm\\_source=feedburner&track=rss](http://www.latimes.com/business/la-fi-lazarus-20130329,0,2277464.column?page=2&utm_medium=feed&utm_campaign=Feed%3A%20ConsumerConfidential%20%28Los%20Angeles%20Times%20-%20Consumer%20Confidential%29&utm_source=feedburner&track=rss); D. Rockricks, “Cell Phone companies need to get out of cramming,” *Baltimore Sun*, Sept. 3, 2012, [http://articles.baltimoresun.com/2012-09-03/news/bs-md-rodricks-0904-20120903\\_1\\_third-party-charges-verizon-obtains-verizon-customer](http://articles.baltimoresun.com/2012-09-03/news/bs-md-rodricks-0904-20120903_1_third-party-charges-verizon-obtains-verizon-customer); D. Segal, “To stop cellphone cramming, don’t let it start,” *New York Times*, Apr. 7, 2012, [http://www.nytimes.com/2012/04/08/your-money/cellphone-cramming-gets-a-second-look.html?\\_r=0](http://www.nytimes.com/2012/04/08/your-money/cellphone-cramming-gets-a-second-look.html?_r=0); D. Segal, “What’s your sign? It could be a cram,” *New York Times*, Mar. 24, 2012, <http://www.nytimes.com/2012/03/25/your-money/beware-of-cramming-on-your-cellphone-bill-the-haggler.html>; “Look out for third-party charges on cellphone bills,” S. Salisbury, *Palm Beach Post*, Feb. 24, 2012, <http://www.palmbeachpost.com/news/business/look-out-for-third-party-charges-on-cellphone-bi-1/nL4Nh/>.

<sup>5</sup> See attached NASUCA FCC comments dated June 22, 2012, pp. 11-17.

<sup>6</sup> Senate hearing, note 3 above, p. 7.

reliable method of payment that consumers and businesses can use to conduct legitimate commerce.”<sup>7</sup>


As the payment card industry has observed, there are many points of vulnerability in a payment system, and much is required in order to protect against them.<sup>8</sup> Among the numerous requirements put in place by the payment card industry is the use of a PIN number or its equivalent.<sup>9</sup> While PIN numbers will not stop every fraud, that does not mean they are not an essential piece of the solution. While there is a necessary cost-benefit analysis, it has already been done in the payment card industry.

Third, in terms of what state and federal government might do, NASUCA’s comments at the FCC have offered a number of possible solutions. NASUCA’s most recent comments, including the attached comments dated June 22, 2012, highlight the need for explicit laws and regulations prohibiting cramming, together with appropriate enforcement capability and activity.

This solution is congruent with the problem. It would not disable any legitimate or beneficial commerce or activity, but it would supply a needed public accountability. It would provide the impetus for the telecommunications industry to do what the payment card industry has done. It would do so without being prescriptive about the means and without imposing an undue cost or burden upon the industry. Moreover, it would give needed protection to consumers.<sup>10</sup>

Thank you for inviting these comments.

Respectfully submitted,

  
Craig F. Graziano  
Chair, Consumer Protection Committee

Attachment

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<sup>7</sup> *Id.*, p. 4.

<sup>8</sup> S. Thaker and T. Ramos, PCI [Payment Card Industry] Compliance for Dummies (2011).

<sup>9</sup> *Id.*

<sup>10</sup> See attached NASUCA FCC comments dated June 22, 2012, pp. 17-22.