INTRODUCTION

MS. ROSENTHAL: 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 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 be -- to your image and anything you say or submit to be posted indefinitely at FTC.gov or one of the Commission’s public websites.

Please turn off your cell phones or turn them on to vibrate. And we -- 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.

(Applause.)

COMMISSIONER 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 its 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 phone bills 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 complaint alleges that Wise Media and its principals 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 under represent the problem or under report 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, you know, deeply within the bill or listed in generic-sounding categories, such as premium services. In fact, in INC21, which was one of our many landline cramming actions, a survey showed that only 5 percent of consumers were aware that they had been billed for defendant’s product; and 97 percent 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. 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 in 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.

(Applause.)

MS. 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.

MS. 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 to co-moderate Panel 1. I’m here with my colleague, Andrew.

MR. SCHLOSSBERG: Hi, I’m Andrew Schlossberg. I work in our Mobile Technology Unit here at the FTC.

MS. 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.

MR. 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 are here today. And please speak into the microphones so everyone can hear you on the webcast. Thank you.

MR. 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 have been misled who haven’t consented to the services that they receive and are charged for. On the other hand, many of these services we’ll be talking about provide some very valuable services or very popular, and third-party billing provides a new and competitive choice of billing, particularly for many unbanked individuals.

MS. 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 the Mobile Phone Third-Party Charge Authorization Study, a systematic survey -- 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 percent 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.

And an even more startling statistic, close to 80 percent 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
MR. BREYVAULT: Hi, I’m John Breyault. I’m the Vice President of Public Policy, Telecommunications and Consumer Utility Board, you look at they found between 40 percent and now more than 50 percent of charges are potentially fraudulent. And, so, by our estimate, we’re looking at a problem of between $643 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 that FTC is looking at it today, and we’re happy to be here.

MR. MANIS: My name’s Jim Manis. I’m the Founder and CEO of the Mobile Giving Foundation, now known as the BBB Mobile Giving 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, I think, how wireless technology applies to 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, served as its global chairman for three years, during which time we established the consumer best practices as an attempt to continue to put the spotlight on the consumer’s prominence, if you will, in deriving and interacting with the mobile channel. And I am one of the founders of one of the earlier premium aggregators, a company by the name of m-Qube, which we then sold into 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 is -- 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, it creates an addressable audience for non-profits to engage citizens in support of 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 in 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 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, that 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. So, thank you.
MR. SCHLOSSBERG: Thanks, Jim.

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

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 -- 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, it has an appeal for the younger generation that has grown up mobile-centric.

And, you know, the issue of cramming, which from our view is something -- is a burden that we’ve had to embrace both with the consumer and with the carriers.

It deflects a little bit from the potential and the opportunity that exists in legitimate -- what I would call legitimate mobile payments. And since we’ve launched, we’ve actually had zero -- 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.

MR. SCHLOSSBERG: Thanks.

MR. BRYENTON: And 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 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 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 U.S. experience shows, Canada is similar. There’s an explosive growth of 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 always -- 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 that they’re dealing with as well. So, on that point, I’ll turn it back to our moderator. Thank you.

MR. 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 I will call on you.

So, just to get started, just for a 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 who get third-party charges -- what proportion of consumers get third-party charges on their bills? Either one of the Jims want to take that?

MR. GREENWELL: Want me to take the first --

MR. MANIS: Go for it.
I’m buying Facebook credits. And those are two distinct types. I would say it’s probably in the $300 million -- $300 million processing volume range, and growing very, very rapidly. It’s getting some wide adoption as we go along.

MR. MANIS: And, you know, 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 space is it’s actually been shrinking significantly over the last few years. The number of players defined -- players defined by the authorized aggregators who can place a billable event onto your phone bill across all the wireless operators has declined significantly, and I think there’s two left in the space today.

I think that’s probably largely due, and maybe if there’s other carrier representatives in the room, you might want to address that, but I think that’s largely due to a number of measures that industry has taken, both through CTIA, through the MMA, 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 up front to -- that a charity has to meet standards above and beyond just simply being an authorized 501(c)(3), a 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, I didn’t have the 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 U.S., but we also have the Mobile Giving Foundation of Canada, which we -- which is well placed there, 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, you know, raised north of, you know, $70 million in donations over that period of time in $5 and $10 increments, right, 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 charity’s perspective, they’re trying to find ways to acquire new supporters of their causes; they’re trying to provide --
aggregators. These content aggregators have been incentivized by the commercial agreements the carriers have entered into with them. They’re rewarded when their -- 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 who support these services. And then if one is a content provider, the content providers have a relationship with the aggregator, not with the -- not with a 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 a 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, you know, 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. Those are the different layers in providing these kinds of services.

MR. MANIS: Just one note on the mapping piece of that, so in the commercial space, that’s exactly correct. In the commercial space the content provider that has that relationship to the aggregator, right, 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, right?

Where you’ve seen cases of cramming, my guess is it probably originates at some content provider with remote distance who passes that through, right? In the charities, and to Mike’s point, that has, in our observations, dramatically decreased because the carriers really have put some stringent controls in place. For example, if you -- it’s hard to measure, but one baseline measure is refund rates. Refund rates exceed a certain amount, something like 8 percent, that content provider no longer has access to the network. So, you know, they really do close that piece down, in addition to the day-to-day monitoring of advertisements that take place around a called action. And that’s in the commercial space.

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

And now I understand that at least there’s two carriers on the commercial side of the business that have put in consent management platforms to grab that opt-in, right, that initial opt-in, away from the 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 invisibility to the consumer’s initial action and intent is critical to making sure that we have full transparency to what their objective 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 in 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.

MS. BUNGO: Thank you, Kate.

Larry, did you have --

MR. BRYENTON: Yeah, I’ll just pick up on that point. And I think, you know, at the very essence of the issue from the law enforcement side is that complaints are received from people that don’t believe that they are 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 that a lot of consumers are uncertain as to how charges do get on and let alone being able to differentiate and confirm what the charges are when they do get their bill.

MS. BUNGO: Okay, I’ll go to John and then to Mike next.

MR. BRYENTON: Sure. So, I think it’s important to note, I mean, 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. I mean, clearly, I think, 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, you know, 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. I mean, how many folks in the room actually look at your wireless bill on a monthly basis? One? A few of you, a few of you, great.

And, so, 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 has become so easy and so lucrative for scam artists. Small charges, misleadingly labeled, on bills that people don’t read. It’s almost the 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 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 of 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 countermeasures that the MMA and others have in place to protect us aren’t actually doing what they want them to do. And we think there needs to be some serious thought given to what regulators can do to address the problem.

MS. BUNGO: Thank you. I know we’ll be exploring the measures that have been taken in the second panel. But, Mike, if you’d like to respond, industry perspective?

MR. 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 as 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 will be billed 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 is no premium message charges.

MS. BUNGO: I’d like to give Jim an opportunity to speak, and I have a follow-up for Mike real quick, which is as to the placement of the 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?

MR. ALTSCHUL: The carriers do provide disclosures that -- 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.

MS. BUNGO: Thank you. Go ahead, Jim.

MR. MANIS: Just real quickly, I did want to make a comment that -- follow up on the comment that Mike made but also to Kate’s point. There is no gap between the initial action that a consumer or a donor takes and the bill, right? So, to Mike’s point, this is a double opt-in process, and that double 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 their actions.

So, this notion, the question that you just asked, is the consumer ever notified, let me just read you two quick little 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, you will be sending a 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 states terms and conditions and we have 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 charged, right, it can be five, ten, in this case it’s a trial for $25 charged to your cell phone bill for this particular charity. Info at, again we provide a little mini URL, reply help, you know, 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 of charge, let the consumer know and confirm the action that they initiated, to let them know that the result of that action will be an appearance on their phone bill, and will provide terms and conditions for -- 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.

MS. BUNGO: I know there’s a point that John would like to make.

MR. BREYVAULT: Yeah, I mean, I would just point
out again that, you know, 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 I 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 would ask -- 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 
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 to 
get into a website that they wanted to see.

So, I think you have to be clear the 
distinction between charitable giving via text messages, 
which is where the intent is not to deceive, and 
commercial cramming, where the intent is to deceive. And 
I think the 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. 
MS. BUNGO: Thank you. Kate?

MS. 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, 
ever 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.
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And, if the premium space goes away, guess what, we go away, too, right? So, there is a thread, 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? So, it’s -- take a look at that. Remember, the big addressable audience 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, Android, on Windows, others. And now you have to educate the consumer around how do you discover that, how do you download that, how 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 solution, 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-bill premium SMS. Well, like what we do for the Microsoft HelpBridge app, right? 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 an issue.

MR. ALTSCHUL: Although Jim is 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 or 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 an app provider. And, you know, it’s up to the app store and the way they curate the apps and the charges they process to protect consumers in that space.

MR. SCHLOSSBERG: Jim Greenwell?

MR. GREENWELL: Sure. Well, just a couple of observations. Jim, I think, if Kate ever leaves law, you’ve got a chief marketing officer there with the opening there on the Vermont giving. Secondly, the native apps versus HTML5, yeah, we’re actually processing some high volumes for a major, you know, storefront, and it goes back to, you know, something John said resonated with me. It’s really the intent. Right now from a commercial -- 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, you know, 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 is always there because of the intent behind somebody’s, you know, purpose to whether it’s app, whether it’s the workhorse of premium SMS, it’s all the intent behind the merchant.

You know, 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. You know, a lot of 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.

MS. 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?

MR. ALTSCHUL: I’m happy to take a stab here.

MS. BUNGO: Okay.

MR. ALTSCHUL: We’ve learned sometimes proactively, sometimes the hard way, the importance of vetting the person or entity behind the content up front 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 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 or 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.

MR. SCHLOSSBERG: Let me just jump in one quickly. We have a couple minutes left on the panel before Q&A. 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 here before we get to Q&A.

MS. BUNGO: Right. And I’ll go to Kate and then to John.

then to John.

MS. MCCABE: Thanks. So, we’ve had pretty extensive experience in Vermont with landline cramming, and what we’ve learned is that notification -- 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 selling -- 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 consumer surveys in Vermont about landline cramming we found that the numbers of unauthorized charges were more in the 80 to 90 percent range, and that was -- that’s a matter of public record already through the testimony of my colleague, Elliot Berg, in front of Rockefeller’s Senate Commerce Committee last year.

So, what we did is we made it unlawful except for 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 crambers.

MS. BUNGO: John?

MR. BREYault: Yeah, I mean, 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 -- well, 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. I mean, the landline cramming is a problem that began in sort of the late ’90s, early 2000s. And under pressure, the industry said we’re going to fix this, let us do this ourselves.

Ten years later, we still see billions of dollars in landline cramming charges. And it wasn’t until the -- there was legislation proposed and the carriers finally were convinced that there was something serious going to happen to them that they take the right step and they decided -- 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 demonstrable impact in reducing landline cramming complaint volumes. So, I would just caution to say if 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 are going to affect consumers. So, I would just say that, you know, 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, I think, more aggressive action by regulators to address the problem that we had in the landline space.

MS. 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 perspective. Let us know whether this is only an issue in the U.S. or if
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1 you see it elsewhere.
2 MR. BRYENTON: Sure, thank you. I’ll just pick
3 up on the point in terms of the self-regulation and sort
4 of the pitfalls or the advantages of that. As I
5 mentioned in my opening comments, the Competition Bureau
6 is an independent law enforcement agency, and we strive
7 to foster competitive and innovative marketplaces and
8 ensure informed consumer choice. What we’ve seen in the
9 past year or so was that there’s been a lot of concerns
10 about -- from consumers about the unwanted and
11 unauthorized charges on their mobile bills in the
12 Canadian context.
13 This led us filing a court action last fall
14 after a five-month investigation where we filed against
15 three of the major telephone companies in Canada in the
16 Canadian Wireless Telecommunications Association, which
17 is the industry association in Canada, for what we
18 believe is to be misleading conduct relating to the
19 premium text delivery to consumers in Canada. And we’re
20 looking for them to do a number of things in terms of the
21 court actions.
22 But what our investigation concluded is that
23 the three mobile carriers that have somewhere in the
24 neighborhood of 93 percent of the Canadian marketplace,
25 along with the wireless association, facilitate the sale

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1 to their customers of premium-rate digital content such
2 as quizzes, horoscopes, things of that nature as we’ve
3 already heard today for fees that weren’t adequately
4 disclosed to their customers.
5 And in our view, the customers were misled into
6 believing the content was free when invariably the case
7 was the consumers were ultimately charged, sometimes for
8 a one-time fee or, in a number of cases, for ongoing
9 subscription or subscription-trap type situations where
10 it could be significant charges to them.
11 What we’re looking for in terms of relief
12 through the process is we’re looking for full restitution
13 to consumers as part of our ongoing court action. We’re
14 looking for the companies to stop making any
15 representations that don’t clearly disclose the price and
16 other terms and conditions applicable to premium-rate
17 digital content. And we’re also looking for significant
18 administrative monetary penalties in the neighborhood of
19 $31 million as a relief from the court, as well as
20 substantial corrective notice in the public domain to
21 identify the problem and the corrective actions that have
22 taken place.
23 Now, just sort of building on that, what’s
24 happening outside of Canada, what’s outside of the U.S.,
25 we participate in international law enforcement fora

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1 around the world, and the issue of mobile billing and
2 bill-shock is certainly an issue that is impacting a
3 number of jurisdictions. Our colleagues in Australia are
4 spending a lot of time and effort looking at premium-rate
5 issues, the United Kingdom, as well, as well as the
6 European Union. There’s a number of different agencies
7 as well.
8 One point that I’d like to draw to is that
9 there’s a presentation that was brought before the
10 organization of economic and cooperative development last
11 file by a group called the London Action Plan, which is a
12 group of 28 law enforcement agencies that deal with
13 consumer protection issues in cyber-type problems, did a
14 fairly comprehensive report related to online and mobile
15 best practices. And they looked at a number of different
16 issues impacting on consumers in that space, but one
17 significant area that they spent time working on was
18 related to mobile and mobile devices. And they
19 identified the risks associated with mobile and premium
20 text-type scams.
21 So, it’s a good document, sort of outlines a
22 bit of the structure, the conduct, and the problems that
23 emanate from that and just underscores the point that
24 it’s not just an American issue, it’s not just a Canadian
25 issue, it’s an issue that transcends jurisdictions around

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1 the world with agencies having this issue on top of mind
2 to deal with protecting their consumers.
3 MS. BUNGO: Mike, a quick response?
4 MR. ALTSCHUL: I just wanted to underscore that
5 the double opt-in which is required for initiating any
6 kind of premium SMS does require disclosure as to whether
7 the premium charge is one time or recurring. It does
8 require disclosure of the cost.
9 And unlike a lot of the software shrink-wrapped
10 contracts where you just click accept or go to the next
11 page also requires an affirmative response by the
12 customer sending the text back with a yes, or in some of
13 the cases, for the kind of products that Jim’s companies
14 does, an actual PIN to confirm the intent to go ahead
15 with the transaction. And that’s something that the
16 industry does monitor pervasively, again, every code,
17 every month, for compliance. It’s saying we subscribe to
18 these campaigns.
19 And we also require as part of the industry
20 best practices for subscriptions a reminder every 30 days
21 to consumers that they are subscribed to a premium SMS
22 subscription, that it’s recurring, what the charge is,
23 and to end it, they should text “end.”
24 MS. BUNGO: Thank you, Mike. I know we’ll be
talking about some of the procedures that are in place in

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It’s to your carrier. And I think you’ve seen case after case the 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 their 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 need to realize, too, that there are -- that the interesting thing about cramming is that it actually crosses across a 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 the complaint volume to say 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.

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 that this is even happening. And, so, I suspect, you know, consumer complaints are always -- always under report the problem. But I suspect that this is even more egregiously so with respect to this problem.

One in one thousand 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, you know, one in a thousand 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 complaint rate to stay constant while there still being a fairly large underlying problem. Thanks.

MS. BUNGO: Thank you. John?

MR. 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.
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MS. BUNGO: Can anyone speak to that?

MR. ALTSCHUL: I have no visibility into that.

MR. GREENWELL: I don’t know that number.

MR. BREYault: Yeah, I don’t think you can -- I don’t know that there’s necessarily a number and a percentage of people that have the charges 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.

Ms. MCCABE: I think it’s an interesting -- 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.

MR. MANIS: Well, it’s -- I think it is -- 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 have been put in place to actually control that, right?

And, like you, 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’m a little -- I’ve heard refund rates thrown 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 provider, but I can tell you at the Mobile Giving Foundation, you know, we have kind of a standard refund rate that you see on almost every transaction or kind of group of transactions. And ours average something a little bit less than 1 percent in kind of everyday giving. So, I don’t know what that means when someone still calls back and asks for a refund on a donation that they made. And I know that that -- and that refund rate blimps up a little bit in terms of high volume traffic in response to emergency relief activities. And when I say blimp up, it may go from less than 1 percent to about maybe less than 1.5 percent. But, so, there’s -- 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 someone -- when a consumer calls with a -- with a refund request, we try to capture that information. So, I want to know what it is that they’re -- what are they saying? Why are they asking for the money back? And that’s an interesting -- that’s an interesting process.

MS. MCCABE: And 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 a 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 percent of their money. And, so, you know, if that were 100 percent, what would that refund rate have looked like? Would it have been so high that Wise Media would have been cut off before they were?

MR. MANIS: Yeah, and in the case, again, not to mix commercial with 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 percent. 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 did they get back their original donation, but they made, you know, 10 bucks on top of it, so, right.

MR. BREYault: And I would just add to that, you know, in the California PUC’s report, I believe the number they found was something on the order of 25 percent refund rate for third-party charges. So, take that for what you will.

MR. ALTSCHUL: But, again, the refund rate, an awful lot of good will goes into that carrier’s -- 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, you know, 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, you know, for parents to -- and a responsibility for parents to supervise all the authorized account holders on an account.

MS. MCCABE: Mike, I’m glad you said that. I’ve been waiting for you to say that.

MR. ALTSCHUL: Uh-oh.
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<td>MS. MCCABE: 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 encourage you -- I want to assure 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 is 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 he wasn’t -- you know, 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 was -- had a frequency of 29. So, you know, 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.</td>
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<td>MR. SCHLOSSBERG: Great, thanks, guys. We’re going to get into a couple minutes of Q&amp;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 just 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? Maybe Mike or Jim Manis?</td>
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<td>MR. MANIS: Well, in 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.</td>
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<td>MR. ALTSCHUL: And this is one of the evolving practices where the information and the confirmation flow is moving up to the aggregators and carriers.</td>
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<td>MR. SCHLOSSBERG: Great.</td>
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<td>MR. MANIS: We offer, by the way, access to the carriers if they want to see data on our platform, that they can actually look, you know, peek in and see that, but it resides on our platform.</td>
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<td>MR. SCHLOSSBERG: Great.</td>
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<td>MS. 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 credit issued and, if so, is the carrier issuing credit?</td>
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<td>MR. GREENWELL: No, it’s a great question, and it sorts of converges a number of large meta trends, I would say. So, simply put, no, the carrier does not carry the credit; the merchant or the content provider in legacy terms carries the risk. So, you know, this device that everybody’s trying to figure out, this lovely mobile device, everybody is investing, I think, billions of dollars in trying to, you know, you use the wallet, and that’s a very loose term, but, you know, the -- 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, where their restrictions and the financial industry with their sets of restrictions, the last thing 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.</td>
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<td>And by the way, the old PSMS rates, and I remember Puff Daddy or P. Diddy walking around CTIA with his entourage eight years ago, and the reason he was at CTIA was twofold. 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, and he was making a mint on it because the carriers would take, I think, 35 percent of that, the aggregator would take, I think 10 percent 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, you know, 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, you know, storefronts being established, Apple, Google. And so where perhaps you had on-deck type content being delivered in the past, you now have these legitimate mainstream content providers giving consumers access to that, so . . .</td>
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<td>MS. BUNGO: Thank you.</td>
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<td>MR. SCHLOSSBERG: Great. Another question here, what kind of third-party charges are not premium</td>
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SMS and how does that work?

MR. GREENWELL: So, perhaps the best way and
the simplest and 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. You know, we talked about refund rates
where we have, for example, on a couple of carriers we
have refund rates less than 1 percent.

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

MR. MANIS: But both are carrier-billed.

MR. GREENWELL: Both are carrier billing. And
that’s the similarity.

MS. BUNGO: Okay, 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?

MR. 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, you know, 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. So, and
that’s part of our partnership with the Council of Better
Business Bureaus and the BBB Wise Giving Alliance. So,
you require standards being met, 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 when -- and
then when the carriers collect and remit, we’ll remit
directly back to the beneficiary charity, so it provides
us with -- that’s where the 360-degree view comes in.

MS. BUNGO: Okay, thank you, Jim.

MR. GREENWELL: Just 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? Okay.
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? Okay. Thanks.

And, you know, it’s interesting if mobile
COMMUNICATIONS TO REDUCE MOBILE CRAMMING

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

Today we’re going to get into current strategies to combat mobile cramming. We have a lot to talk about, so I’m going to jump right into the panelists and issues. So, take it away, Duane.

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

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

This is a real-time example of a cramming scheme that existed over the last couple of years that sort of caused -- you know, was an issue despite the current efforts to combat mobile cramming.

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

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

Wise Media then places the charges on consumers’ phone bills via arrangements with aggregators. Consumers who noticed the charges widely reported they had never even heard of Wise Media; they’d never been to the website. Some of them reported they don’t use text messages. Some reported they were unable to receive text messages on the lines that were billed. Additionally, consumers reported difficulties getting refunds. There is evidence in the record that carriers often sent them to Wise Media to get a refund. Consumers reported that they reached a call center where they were promised a refund by Wise Media representatives; they never got one.

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

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

Overall, Wise Media was able to collect more than $6 million in 18 months. The carriers received 30 to 40 percent of the charges. Wise Media was able to place charges on more than 2 million phone bills, and consumers have received, to date, over 190,000 refunds.

So, those are some of the numbers as a backdrop of a specific case study of what one of the -- and this is all public information, just to be clear -- this is all public information in the record about what one alleged crammer was able to do.

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

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

But now that our landline bills are under lock and key, CUB’s concern is that scam artists are -- that
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<td>scam artists have declared open season on our cell phone bills and that cell phone-related commerce is the new frontier for fraud. And that concern comes out of both experience and analysis. Last December, CUB partnered with wireless research firm Validas to release an analysis of more than 200,000 Illinois cell phone lines. And we found that the number of suspicious charges had nearly doubled on Illinois cell phone bills from one year to the next. Now, Validas took a very conservative approach, only labeling charges as suspicious if it had been -- if it was connected to a company that had been involved in past phone fraud litigation. But our experience at CUB tells us that this analysis may just be the tip of the iceberg. We hold hundreds of phone bill clinics across the State of Illinois and we see these suspicious charges all the time. We see suspicious charges on our cell phone bills. I am not proud to say that I’m a victim of cramming. One of our top lawyers at CUB went three months before she realized she had a 9.99 premium services fee on her bill. It was some type of love tip service called Love Genie. Now, Christie is happily married; she’s got a new baby; she had no business and she did not order Love Genie. And by the way, Love Genie is offered by Wise Media, which the Federal Trade Commission just recently wisely sued. So, it is encouraging to see the steps that the wireless industry has taken to combat cramming, but I do think it’s inevitable that we will need tougher regulations to cut down on cramming. And that would include some type of ban on third-party charges with reasonable, common-sense exceptions. Now, no question, there are legitimate third-party charges. I am grateful that I was able to use my cell phone to give to hurricane relief, but I think we need tougher regulations to draw some clear lines between what is appropriate and inappropriate. And I think moving beyond self-regulation is vital, not only to protect customers, but it’s vital for the health of the growing cell phone economy. And it’s vital for the credibility of the cell phone industry. Thank you. MS. FREY: So, I got excited because Cubs and Illinois, I thought we were talking baseball, but anyways, so my name is Cara Frey, and I am General Counsel of the Mobile Marketing Association. The MMA is a global, not-for-profit trade association whose mission basically is to make mobile an indispensable part of the marketing mix. We represent all players in the industry, so in the past panel you kind of heard the description of each of the players, so brand marketers or content providers, enabling technology providers, who are the carriers and the aggregators, and then sellers of advertising and marketing services. The reason we wanted to participate in this roundtable, and I thank the FTC for allowing us to do that, is to, first and foremost, state that we believe that mobile cramming is bad, and I know that sounds extremely simplistic and obvious, but from our perspective, if mobile cramming persists and actually, you know, if it actually increases, then at some point the consumer is not going to want to participate in the mobile channel and the industry will shrink. And, again, that’s completely opposite of what our mission of the MMA is. I also think we can offer some relevant history regarding our industry’s efforts to establish clear guidelines for messaging. You heard Jim Manis talk about -- Jim Manis was the Global Chairperson of the MMA back from I believe 2003 to 2005, but back in 2005 when the mobile industry really was in its infancy, there were no rules for messaging. So, the MMA, seeing the need for this, brought together an industry coalition that established guidelines for messaging with the kind of three key elements being transparency, control, and choice. Those guidelines became known as the consumer best practice guidelines and were approximately like 14 pages long at that time. By 2009, those 14 pages had grown to about 150 pages. And mostly that was because the common rules of the carriers were consolidated into that document, and then each individual carrier’s guidelines were attached to that document. In 2012, the CTIA and MMA got together and worked to consolidate that 150-page document into 30 rules. And those 30 rules are what the CTIA is auditing against. And it made sense -- I mean, it makes sense for the CTIA to kind of take over those rules, those guidelines, because the MMA has never been an enforcement agency. That’s not -- that’s not what we are doing. We’ll continue to work with our members to articulate best practices in mobile marketing in general. But -- and including, obviously, messaging. And I do want to emphasize that I think that we are in a unique position because we are the only trade association whose sole mission -- or sole focus is on the mobile industry. And because we represent all of the different players, I think we can uniquely influence the industry. And this is a -- I mean, this gives us a perfect opportunity to</td>
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try that. So, thank you.

MR. HALLIDAY: Hi, my name is Derek Halliday.

I’m a Product Manager at Lookout Mobile Security. We’re probably best well known for our consumer mobile applications, one of which runs on Android, one of which runs on iOS, that let people keep track and keep secure every aspect of their mobile experience from backing up sensitive data to finding a lost or stolen device or to downloading applications or browsing the web without fear of encountering malicious content. And that last piece is what, I think, you know, best fits into this conversation today.

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

So, even at a small scale, the task that we’re -- that we sort of task ourself with is figuring out, you know, which of those are good and which are bad is somewhat daunting. So, one of the ways we actually do that is by deeply inspecting the content of an application for -- you know, the best -- I guess the best way of thinking about it is thinking about it in terms, you know, that genomic content of mobile applications out there and mobile-app genome project.

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

If you compare the sort of rate encountering malware in the U.S. with places like China and Russia, for instance, there’s a pretty stark contrast. The actual percentages of encountering threats there are 20 percent in China and around 40 percent in Russia. So, it’s pretty stark. But when you look at what’s responsible for that overall trend of malware in particular, we actually see that over 78 percent of malware threats are oriented around toll fraud. And that is essentially the lowest hanging fruit for some of these fraudsters.

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

You know, in terms of how big of a draw this can be for some of these fraudsters, we estimated that on the conservative side one single family of malware that really was designed to commit premium SMS toll fraud netted upwards of $10 million over the course of nine months. You know, when you look at the scale that mobile is operating at right now, it doesn’t take much to really get those kinds of returns.

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

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

MR. BRUNER: Good morning, and thank you for having us here today. I’m John Bruner. I’m the Chief Operating Officer of Aegis Mobile. Aegis Mobile is a compliance and testing company that provides policing activities for the carrier PSMS market. Over the six
The third phase is that we pull post-revenue data, and we pull data on refunds and revenue spikes, as well as customer care data. And we bring that into an integrated data warehouse that has all of our in-market testing and all of our pre-launch testing and background check. And we analyze that for activities that help us pinpoint and target bad behavior and, in addition, to go out and find it based on that data. In every instance of our process, we’re gathering documentation of everything that we do. All of that data is stored, and all that data is then presented to regulatory agencies and carriers to help prosecute and remove these bad content players from the market.

MR. POZZA: And just to remind everyone to speak into the microphone because the folks watching on the webcast, that’s how they hear.

MR. SINGER: Good morning. My name is Paul Singer. I’m an Assistant Attorney General in the Consumer Protection Division at the Texas Attorney General’s Office. I also thank the FTC for allowing me to be on the panel today.

Real quick I’ll say that any views expressed are mine and not necessarily those of the Office of the Texas Attorney General of Attorney General Greg Abbott, and nothing that I say should be taken as legal advice.

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different individual and an address that was, you know,
randomly placed throughout the country. And you'll see
in this program brief there, you know, some clear
designations of what the price is going to be for the
service, the short code is identified repeatedly on the
brief itself.

So, this is what happens in the real world.
Consumers would get to a Jawa website first by doing an
Internet search for something that typically was offered
for free, so things like a movie show time or weather or,
in this case, funny jokes. And typically one of the
first paid links that would show up would be a Jawa-run
website. So, once a consumer clicks through, this is a
sample landing page of what they would get to. Obviously
there's a very prominent call to action, asking for a
consumer to enter their cell phone number, and there's
little or no significant disclosure that occurs
surrounding it.

And, you know, this is one of these little
tests where, you know, MMA requires a disclosure of
the price to get into some of the nitty-gritty. It needs
to be 125 pixels from the entry of the cell phone field.
Well, in this case, you'll see that there is a reference
here to monthly 9.99. It's buried in the background;
't's blended in with this image, but on many of these
sites, when you measure the distance between that and the
cell phone field, it falls within the 125 pixels.

Once a consumer enters their cell phone number,
as was described in the last panel, that serves as a
first opt-in for the double opt-in process. Consumer was
sent to a page that looks similar to this, asking them to
enter the PIN code that would be sent to them.
Meanwhile, they would receive a text message. One of the
tricks that Jawa used was to insert large gaps of spacing
in the text messages themselves. So, this is a sample of
an iPhone screen shot, and you'll see that when you open
the message, this is what would show up because it starts
from the bottom of the text message, this is the language
that you see, and all you see is the passcode down there
at the bottom.

If you go to the top of the message, you see
the same thing, passcode, and then it's only if you
actually scrolled to the middle that you saw any
reference to a price, and you'll see sub monthly 9.99
there.

One other thing that I'd note, because this
came up on the last panel, too, you'll see this reference
to standard rate plan in the text. That was actually the

the cell phone bill, when it identified what this charge
was, it read as Standard Rate Plan.

Now, one other quick note on how Jawa worked,
if a consumer ever went back and said, hmm, I want to see
what that webpage looked like that I first got taken to.
If they typed in the actual URL of the website, they
would be taken to an entirely different page, and it
would look something in the neighborhood of this a lot of
times, which is just a non-PSMS, generic page.

And one thing John may want to comment on as
well, but Jawa used fairly sophisticated cloaking
technology, where it would gather the IP addresses of the
auditors, and when auditors would try to go through and
check these sites, it would serve up a page that looked
similar to this to the auditors, as opposed to seeing
what was happening to consumers.

This is another quick example of an advertised
webpage, which you'll see on the left, and then a -- what
we call a direct-entry page where the consumer or user
would type in the actual address. And this was sort of
another tactic that they used, where you'll see that the
pages themselves, very similar, but you'll see on the
right the page where the consumer might go back and
double check that at some point it has far more prominent
disclosures, many more price points. It includes a far
more prominent check box at the bottom.

One final note on check boxes, using this
example, you'll see this is the actual consumer
advertised site. You'll see that there's a check box
under that sell submit field with very difficult-to-read
language that was coloring blended into the background.
If a consumer entered their cell phone number and failed
to check the box, a little popup came up like this that
said select okay to go to the maps. And if you click
okay, it clicks the check box and takes you to the next
step and it would actually treat it as your first opt-in.

By comparison, the page when a consumer would
directly type in the website, if you didn't check the
box, you got this alert that told you you have to go back
and accept the terms and conditions and it would simply
take you back to the initial page in order to require you
to physically check the box.

So, I mean, that's just my quick demonstration.
Like I said, I'll be referencing back some of the lessons
that we learned in this case and some of the examples
from it.

MR. POZZA: Right, plenty more to explore
there. Our last panelist is actually participating by
phone. It's Chris Witteman, Senior Staff Counsel with
the California Public Utilities Commission. And hold on
a second, I’ll get him on the phone.

MR. WITTEMAN: I’m here.

MR. POZZA: You there, Chris?

MR. WITTEMAN: Can you hear me now?

MR. POZZA: Yes. We’ll let you know if there’s any feedback, but you might have to mute your webcast.

MR. WITTEMAN: Okay. So, my name is Chris Witteman. I’m an attorney with the California Public Utilities Commission, and I should follow immediately with the same disclaimer that Mr. Singer made. I am here speaking for myself and not for the California Public Utilities Commission. I have participated in a number of proceedings, though, that involve cramming, so I have some idea about this subject. And I do want to thank the FTC for having this panel and for having me on the panel. We, out in California, very much appreciate the FTC’s efforts in the cramming area, particularly the INC21 case in the Northern District of California was a seminal case for us out on the West Coast.

The second substantive point I’d make is that -- is how little we know. As the first -- referenced in the first panel, the mobile and wireline third-party billing ecology is a three-legged stool. You have the billing telephone companies; you have the aggregators; and you have the service or content providers. And this dispersion of roles leads to, from my perception, some lack of accountability on the part of each of the carriers, and as the Vermont Attorney General said, a gap between rules and reality.

What we have done in California to address that issue is a decision in rules issued in 2010 around cramming and the life motif of that decision is this sentence: The billing telephone corporation bears ultimate responsibility for all items presented in a subscriber’s bill. With that principle, we have required billing telephone companies to conduct a reasonable inquiry before they sign on a service or content provider, before they give billing privileges, if you will, to a service or content provider.

We require the billing telephone corporation to disclose third-party -- the possibility of blocking third-party charges. We require the billing telephone corporation to report refunds to us. And we use refunds as a proxy for complaints because when we had complaint reporting we would end up in endless semantic digressions around the meaning of the world complaint. So, refund is something a little more tangible and we assume that in most cases refunds are not made out of the blue but in relation to some expression of dissatisfaction by the customer.

And, finally, we require billing telephone corporations to resolve complaints and to terminate bad actors. Just in the area of complaint reporting, I understand that our letter to the Senate Committee reporting refunds in the wireless space will become part of the record. And you see there that we’re -- what the carriers are reporting to us is a refund rate in the area of 12 or 13 percent, so this begs the question of what is the threshold for terminating bad actors in this space. Is it 8 percent as we heard in the previous panel, or is it something else?

The other thing that you can read out of that letter in the data provided there is how small the complaint numbers to us an agency are in relation to the refund rates. And we suspect that the refund rates themselves are small in relation to the total volume.

I was interested to hear Mr. Singer’s discussion of his recent case. We, in California, have been litigating and are still in the process of litigating a case against Telseven and Calling 10. In that case, there were 2 to 3 million Californians who were charged $7.70 roughly for supposedly directory assistance. We did not find one customer, could not find one customer, who admitted authorizing that directory assistance charge. That appeared on bills. There was an opt-in there or a nominal opt-in by virtue of the consumer calling supposedly to get this directory assistance, but we believe that that was induced, you might say fraudulently or by misleading statements, in the context of the call.

So, the final thing I’d like to discuss in terms of strategies to reduce mobile cramming is the bill blocking option. That is one of the things that we require of billing telephone corporations, that they disclose that and that there is that option. The question then becomes how well do they disclose it, and our preliminary investigation of this leads us to the conclusion not very well, at least not in all cases.

In many cases, consumer service reps are unaware that there is a bill block option. It’s not prominently featured on websites. And if the mechanisms of adding and removing the block, which should be free per our rules and should be easily added and removed, those mechanisms are not always clearly described. So, that’s the landscape from our perspective.

MR. POZZA: Thanks, Chris. So, turning to some open-ended questions, one topic that we want to drill down is the vetting of content providers. We heard on the last panel and then in the introductory remarks about the efforts that different players in the industry make
to vet the content providers, and these again are the
companies actually providing the horoscope or the content
or the ringtones or whatever, you know, and placing the
billable event on the bill.

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

MR. BRUNER: Sure. I’ll stay on the microphone
this time. So, to define vetting first, because I think
Duane and I when we first started talking vetting, we
were using it differently. Vetting is actually doing a
background check on the content provider that wishes to
come onto a carrier’s network or wishes to purchase a
short code through CTIA first. The vetting process is
essentially a background check, much as you would do a
background check on an individual for a credit card. We
seek databases that we pay for as a company, but we also
do a number of other data sources, which I’m not going to
disclose all those data sources at this time, simply
because it is part of the secret sauce of protecting this
industry.

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

I have a slide that I show sometimes that
pictorially shows groupings of bad players, how they come
back as different companies and turn bad, but you’ll see
when we plot them on a point diagram that you have
clusters of good players that have relationships to each
other, and then you have clusters of bad players. And
sometimes what we find is we’ll find clusters of bad
players and we’ll find a few not-yet bad players related
to them. And, so, in terms of going beyond the vetting,
that’s one of the indicators that we use to more closely
monitor those companies that seem to have relationships
with other companies that we’ve found in the past.

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

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

MR. BRUNER: We actually believe that the full
life cycle approach is critical and the ability to join
the data across the full life cycle is important. One of
the things that I probably failed to mention in the first
answer is that, you know, companies change, so just
because you vetted them once to let them onto the network
doesn’t mean that they acquire a new CEO or they acquire,
you know, another company. And, so, revetting is also a
very important thing.

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

In terms of jumping into the market, yes, it’s
very important, because that’s the other side of it.
Companies, you know, will change potentially after being
vetted, and they change all the time. And, so, to say
that they can get through and get on the network, you
know, and pass the vetting process doesn’t mean that they
won’t then start doing deceptive advertising, stacked
marketing or anything they can do to get people to buy
their products without them necessarily understanding
what they’ve done.
So, the monitoring is very important. The monitoring of all the advertising and ways that link into the process of purchasing on PSMS, as well as the functional testing and the content testing, as well as then analyzing the billing that comes in to ensure that the bill space descriptors are accurate, as well as looking at refund rates, which we’ve heard a lot, as well as looking at revenue spikes, as well as looking at activities when, for example, a catastrophic risk occurs, because bad guys come out of the woodwork when there’s, you know, an opportunity, when everybody’s willing to donate money, then that might be a bigger opportunity for them to get things. I’m not saying that charities aren’t the safest things that we see in the PSMS market, but what I’m saying is it’s another opportunity.

So, all of these have to be taken into consideration. One of the things that Paul said earlier about these -- some of these bad guys are using the alternative good site when they know who you are coming in as an auditor versus the site for the unsuspecting, that’s true. That’s a fact, it happens. As a matter of fact, we prefer when they do that because we can find both, and that’s direct evidence that they know what they’re doing. We can show that they have one site that’s fully compliant and another site that’s not.

So, you know, part of the tactic obviously, though, is these are smart technology companies, so, you know, the best thing for us to do as a company is to stay ahead of them technically, which means we’re continually evolving what we do to monitor their behavior.

MR. DEITCH: One of my favorite terms is room for improvement, and I’ve heard situations where different carriers have different refund and chargeback rates. I’m wondering if the cramming problem could be improved if there were an adoption of lower threshold rates by all carriers or sharing of bad actors between carriers so one could not jump just to the other. What do the panelists think about what would be a good refund rate that carriers to determine how they want to manage their refund rates. I’ll say more generally that you probably need to look at the amount of revenue before you look at the refund rate as a relationship, because you could have something that launches that’s got $100 coming on it and it’s got three refunds and so they’re at 30 percent.

I think you need to take a little more into account than refund rate, which is kind of like we like to take into account the data regarding customer complaints, the help desk, as well as the refund and revenue data, as well as, you know, looking at the bill face descriptors, as well as doing the in-market monitoring. I’m kind of dodging it, but to me that’s really a carrier that should be answering that.

MR. POZZA: Well, what do other folks on the panel think about what would be a good refund rate that would seem like it would signal that’s a potential bad actor that some action should be taken against? And I’ll just note, as one benchmark, I believe Jim Manis said on the first panel that they saw a refund rate of around 1 to 1.5 percent on the -- on the charitable side. And the credit card context is generally below 1 percent as the threshold for fraud.

MR. WITTEMAN: This is Chris Witteman out in California. In the Telseven case, we saw a refund rate really very low, about 5 percent, and that gets to the point made earlier that 80 percent of customers may not even be aware that they’re potentially being billed by third-parties. So, I think we need to look very closely at this question and I think that the rate should be on the low side, 5 percent would definitely send warning signals.

Also on the question of vetting, we’ve heard for years from the industry that they are vetting. And when you actually see the documentation of the vetting,
and I look forward to seeing documentation from Aegis and groups like that, but the documentation we’ve seen has been a pro forma, boilerplate, check-the-boxes form that the content provider will fill out and provide to the aggregator who then provides it to the billing telephone company.

So, I’m skeptical about the up-front vetting and I am skeptical about the refund or complaint threshold required to trigger serious scrutiny.

MR. SINGER: I want to say two things real quick about refunds. I mean, one, you obviously have the risk of a Jawa-like situation, right, where you had multiple entities set up in large part to keep refund rates at an incredibly low threshold. And, so, it was very easy for them to just transition the exact same program from one entity, one short code, and, you know, and escalating refund rate to a brand new one, where, you know, you now have this seemingly new entity that’s sort of starting from scratch.

The other issue, I think, is that refund rate necessarily implies that people are actually successful in getting refunds. And I think that the Vermont survey, consumer complaints, they all reflect a lot of varied experiences on consumers actually obtaining meaningful refunds.

And just one example from our litigation, you know, I’ll up Jim a little bit. One of our investigators in our Jawa case, six weeks into the investigation he comes in my office with his head hung low and realized that he’d been crammed for 11 months by them. And it took him that long to even realize it after we had been looking at them.

And he had multiple calls with his carrier, attempting to get a refund. First was told, no, he can’t get any refund; next, he was given either a two or three-month refund. Ultimately, the only way he got a full refund was to go to Jawa directly, who maintained a money-back -- a full, no-questions-asked, full refund policy and issued him a full refund.

MR. POZZA: I’ll give Kristy’s -- maybe we can get his number and Kristy and him can cry on each other’s shoulder.

MR. SINGER: They can swap text messages.

MR. CHILSEN: It does feel like it’s just one big game of high-tech Whac-A-Mole, you know? And I read -- there was a New York Times article which was referenced in the first panel, which, you know, talked about, you know, double opt-in and all these great guidelines, which are excellent. But, you know, guidelines work best when the players are honest to begin with, I think. And that’s one big problem is that good guidelines, I think, are no replacement for, you know, tough, reasonable regulations.

MR. DEITCH: We have a question from email. We’re part of the high-tech group here, we might as well get high-tech questions. It deals with the overlap between landline and wireless billing. As they say, those who forget history are doomed to repeat it. When we had our cramping forum two years ago, I remember some of the stories. The Illinois AG talked about credit repair charges on a central public library story line, which was a prerecorded line. The same credit repair charges showed up on the county coroner’s office bill. And by the time you’re at the county coroner’s office, I can’t imagine you’re worried about your credit rating.

And subsequently the FTC filed a comment with the FCC on landline cramming. And just the topics are abuse of the third-party billing system is widespread; there’s a scarcity of evidence of legitimate use of third-party billing. Disclosures are unlikely to be noticed and will not solve the cramming problem. And the FCC should ban a required default blocking or some or all third-party charges.

So, the real overwhelming question is what can we learn from landline billing. And that’s a long lead-
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1. evidence of, you know, their very generous refund policy, there were repeated references from consumers saying, well, I would have never paid for this, why would I pay for this service that’s available for free.

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

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

I think that, you know, going back to some of the things that we just talked about in the last question, I mean, there are a bunch of different options we can use to actually correlate some of these bad actors in the mobile ecosystem that help us sort of cordon off potential bad actors, including things like reputation. So, while the issues become more complex when you throw things like applications into the mix, it does provide us a number of different additional levers to correlate and identify, say, the same bad actor playing the shell game, jumping from developer to developer, for instance.

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

MS. FREY: Yeah, I’ll start. So, again, I think we all refer to them as the MMA guidelines, but, in fact, they really are the consumer best practice guidelines. And as I kind of explained in my opening, what those guidelines became really were the carrier common rules. So, and that one document, the consumer best practices, really provided one place that people who are running marketing campaigns can go to to access all of the information.

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

Obviously, like I said, I mean, I think this is all part of an evolution, but I think the rules are very effective. And I think, you know, to be honest, I don’t want to particularly get way into self-regulation versus government regulating, but I do think there is a very positive element of self-regulation that we can act as the industry much faster than the government can act.

But I do think that the rules will continue to evolve and the CTIA will continue to audit against those.

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

MR. POZZA: Other thoughts on the panel?

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

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

And, you know, I think one of the interesting pieces, right, is that MMA historically defined clear and conspicuous as referencing back to the FTC.com disclosures as sort of a good standard and something to
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1. look at. And, you know, when we questioned Jawa representatives about those disclosures, they didn’t know what they were, they had no idea that those were there. But they certainly knew the detailed auditing requirements about trying to put a price point 125 pixels from a cell phone entry field.

2. I think the other comment I’d like to make about the rules is that there’s always room for improvement, right? You know, one of the things that we looked to when we were crafting a final permanent injunction in our Jawa litigation was how can we take the rules and make them clearer and more express so that you don’t have companies who can try to use creative interpretations of those rules to get around them.

3. And just another quick example, I showed the text messages that Jawa used. One of the rules says that the PIN has to be after the price in the text message. I’m paraphrasing, but that’s generally how that’s worded. What it doesn’t say is that the PIN can’t also be before the price, which is what Jawa was doing. So, you had PIN at the start, PIN at the end, and price somewhere buried in the middle.

4. So, I mean, those are examples of there’s always sort of room for improvement and sort of looking at the way companies are creatively interpreting these rules.

5. MR. WITTEMAN: And this is Chris Witteman out in California again with a question for MMA or CTIA, if that is the body that’s enforcing this. Would they commit to an open-door policy, vis-a-vis state agencies and the FTC and the FCC, so that we could see where their concerns were and what their enforcement efforts were?

6. MS. FREY: Yeah, this is Cara from the MMA, but the MMA has never been an enforcement body, so I can’t address that.

7. MR. HALLIDAY: Actually, I wanted to jump in on this one as well. Sort of as -- you know, from a mobile standpoint, as someone who is the consumer advocate from a security and privacy standpoint on consumer devices, having a clearly established set of guidelines such as these is immensely important, and having those guidelines be extremely clear is just as important, because we view ourselves as somewhat of an opt-in enforcer for some of these guidelines themselves.

8. The example that we’ve been most familiar with in the past year has been very similar to this but working with MMA to figure out, you know, what the right guidelines are for, you know, the collection of PII from mobile devices. So, I think it’s very similar to this issue. And then it provides a framework for ourselves as a security company that scans the apps on your phone to tell you, you know, what you might want to be concerned about.

9. And, so, for companies like ourselves that are there to protect the user and inform them -- and keep them informed, you know, I think that there’s a clear need for these types of guidelines. That said, I think it’s essential that, you know, a consumer advocate or watchdog is extremely involved in shaping those guidelines, so that they’re not done in a vacuum, because certainly you can iterate very quickly at speed on some of these guidelines all you want, but if you’re not actually addressing the concerns that are facing users and addressing the right bar of risk for users, you’re not going to get anywhere.

10. MR. BRUNER: If I could, the carriers that we represent in the in-market monitoring do also have and have added rules of their own to that. One that comes to mind that’s most interesting to me gives our testers the ability to raise issues when they can’t necessarily pair a problem directly to an MMA/CTIA rule. And, so, you know, we have seen the behavior where carriers are actually enhancing the rules to get greater opportunity to catch what could be bad behavior.

11. MR. FREY: And, Paul, to your point that the rules really seem like we were getting into the weeds, I mean, you are absolutely correct. I sat in meetings where I can’t even begin to describe how many weeds we were in. And that really, I think, in 2012, when we decided to hand it over to CTIA and create just the 30 rules, I’m hopeful that that will, you know, kind of get us out of the weeds and be helpful to the industry. But I totally agree with you.

12. MR. CHILSEN: I’d just like to add that I think it’s important to say that, you know, good, solid guidelines and government regulation should not be mutually exclusive, that they can work very well together. And when I hear Paul talk about the case in Texas, you know, I hear diversionary software, shell corporations, sophisticated cloaking software, and I think guidelines alone can’t meet a formidable foe like that.

13. MR. DEITCH: Let’s move in a little bit different direction. There are three big components of any online transaction. There are the disclosures; there’s this term that keeps getting bandied about, the double opt-in; and then there’s consumers’ ability to dispute charges or get refunds. Since we’ve heard this double opt-in term so often, is there somebody that could explain what it means and the alphabet soup that goes
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1 with it? We hear WAP billing, wireless access protocol, premium SMS. And from there, I’d like to get into issues or problems with double-opt-in. So, could somebody educate us on exactly what double-opt-in is and how it works?

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

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

4 MR. DEITCH: All right. Let’s follow up on that. What’s your -- giving us a scenario where the initial disclosures are deceptive prior to the opt-in, if we look at the next component, what does the opt-in actually tell you? Do you get a receipt? Do you know who’s with what billing? Usually there’s two pushes on a button. Do you know who’s actually pushing the button? Could it be the line subscriber, a child or somebody else with your phone? And the same situation with the PIN, Are there issues when it comes to authentication and receipt with the double-opt-in? Are there ways to improve that?

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

6 MR. DEITCH: And what are they?

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

8 MR. WITTEMAN: Well, out in California we have looked into that a little bit. And contrary to what was said on the first panel, it’s our understanding that those records reside only with the service provider.

9 They’re not even provided to the aggregator. So, one possible solution or measure that could be taken would be to make sure that the aggregator had access to those and the billing telephone corporation had access to those so that they could look into those records and see, A, if they’re there and, B, if they’re credible. And like I said earlier, in the Telseven case we had some -- the functional equivalent of opt-in evidence and but it was our conclusion at the end of the day that that had been fraudulently obtained.

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

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

12 MS. FREY: Before we get to that, I did want to respond to what was said over the phone. And, you know, I’ve heard the suggestion that sort of opt-in management should be, you know, maybe brought in-house or kind of move up the chain, but one thing that I want to put out there is that, you know, these major brands, the content providers see that as a proprietary asset, so, you know, I would wonder and ask the hard-core lawyers, I don’t think of myself as a hard-core lawyer, sort of, you know, what’s your response to that? I mean, how do you protect that proprietary asset?

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

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

15 MR. SINGER: So, I talked about that some a little bit earlier, right? You know, I think the Vermont survey is sort of the most recent example that’s out there that, no, I mean, remedies are often hard to obtain in this field. Consumers report all sorts of varying experiences about their ability to get their money back at the end of the day. And, you know, the Jawa 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
get a full refund at the end of the day.
4. And, you know, it, I think, demonstrates that
5. there is just a great deal of variance in what’s going on
6. today in the marketplace, you know, and consumers are
7. having varied experiences, often with the result that
8. they find it difficult, if not impossible, to ultimately
9. get their money back.
10. MR. DEITCH: Well, that leads to a follow-up
11. question. What can consumers do to protect themselves in
12. the current environment with wireless billing?
13. MR. HALLIDAY: Well, I would jump in to, you
14. know, what Paul just mentioned as well. You know, we ask
15. ourselves if the options for remediation or refunds are
16. sufficient, and, you know, throughout this entire panel
we’ve been talking about the fact that one of the most
17. difficult parts of this process, the critical parts of
this process, is depending on a user to notice in their
18. phone bill that there’s an additional charge that they
19. may not be aware of.
20. If you ask me, one of the most critical areas
21. that’s broken here is that exact process, is depending on
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
there’s something they don’t recognize. I think there’s
plenty of options for notifying users of these types of
services beyond just, you know, an SMS-based double opt-
in that operators, you know, have at their fingertips.
2. They’re in constant communication with these
end-users, why not also send them an email notification?
3. Why not go beyond just a simple, you know, SMS
transaction to make it very abundantly clear that they’re
signing up to be charged and not depend on them to
actually initiate this process.
4. MR. SINGER: And to add to that, right, it’s
understanding just fundamentally that you can be billed
for third-party charges through this mechanism. And I
think the Vermont survey spoke very well about that being
a major issue right now, that consumers just don’t even
understand at the outset that that’s possible.
5. MR. POZZA: What are the reactions of others on
the panel to this idea that there would be some other
notification or even a more -- a different kind of
notification on the phone bill or email or something like
that to a third-party charge?
6. MR. CHILSEN: I think that’s an excellent idea.
We’ve been asking for years is why can’t -- or can the
cell phone industry create some type of red flag system
like the credit card industry has where, you know, a
couple years ago there was this strange purchase on my
bill and I got to call right away and wondered -- you
know, people wondering -- or the credit card company
wondering if that was legitimate, then we would love to
see something like that. I mean, right now, the best we
can tell consumers is, you know, beware of any websites
that ask for your cell phone number, you know, go to
SMSwatchdog.com and if you get a strange text to find out
what you can do, but oftentimes different people will say
different things on that website about, you know, I
replied stop and I still got the charge; or I ignored and
I got the charge. So, it can be very confusing. I mean,
at the top of the list is always for consumers, you know,
even in this high-tech era one of the best protections is
just to make sure to read your bill, your cell phone
bill, you know, every month.
7. MR. BRUNER: I’m not going to claim to be an
expert in this space, but I have seen on a phone bill for
a landline charge a statement separated out that this is
a third-party charge, nonpayment of this charge will not
result in termination of your service. And, so, for me
that stood out very plain and clear, you know, that that
was not a charge from my carrier.
8. MR. POZZA: And just to add to that --

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1. MR. WITTEMAN: One way that customer/consumer
awareness might be raised, just to go a little bit beyond
the California rule, which requires disclosure of the
blocking option and to have an affirmative opt-out, in
other words, when the billing telephone corporation signs
up a customer, that customer has to check a box or
initial a box that says you may be billed by third-party
customers, do you agree to that. I think that would be
one step that might raise consciousness a little bit.
2. MR. POZZA: Jim?
3. MR. CHILSEN: That’s an excellent point. What
I was just going to add to what John said is what we tell
people if they find a suspicious charge on their bill
is to immediately, you know, call the cell phone company.
And we also find that it helps to call some type of
government entity, the Illinois Attorney General’s Office
or the FCC or the FTC, just to be able to tell the cell
phone company, you know, I have this strange charge, I’ve
filed a complaint with a government entity.
4. That seems to add, and it might light a fire
under the company. And also to tell them I’m not going
to pay this charge, it’s under dispute, and I won’t pay
this charge, I’ll pay every other part of my bill, and we
can agree on the phone what that part is and what I
should be paying, but I will not be paying this charge.
MR. POZZA: Just following up on that, do consumers have an understanding and is it the case that they can dispute a third-party charge on their bill without having their phone service cut off?

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

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

MR. BRUNER: Okay, thank you.

MR. SINGER: You’re welcome.

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

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

MR. POZZA: Yes.

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

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

Then we were discussing rap opt-in, which is a little more outdated at this point, but it is directly on your handset where you double-click, you know, you’ll get a popup message that asks if you want to incur these charges, and you click yes twice.

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

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

MR. POZZA: Just to clarify, so in that there is the capacity for someone to push something on their smartphone twice, opting in, and the technology pulls the phone number and then off the phone and then bills to the phone number, or is it more complicated?

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

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

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

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

MS. SIZER: You’re welcome.

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

One question from the audience is also about this -- the double opt-in process. How do you ensure that it’s a consumer who’s opting in to the double opt-in and not a content provider that’s essentially submitting a charge and fabricating the records? And I would add to that, going back to Derek’s example, he said at the
beginning, talking about toll fraud, these apps that I
guess can sign you up without you even knowing it by
sending a text message from your phone. Is there any
technological way to differentiate those kinds of opt-ins
that are fraudulent from real opt-ins?

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

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

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

MR. HALLIDAY: Yeah, in the case that I
referred to at the start of comments here, there -- my
understanding is there is no technical way of
differentiating from the carrier standpoint, essentially
because the way that these threats operate, you know, we
all know how mobile apps can ask for permissions, right,
so when you download a new app on your Android phone, for
instance, you go through a screen that says, This
application requires or asks permission to access the
Internet or to send text messages, for instance. So, if
an application of this sort asks for these types of
specific permissions and you grant them those
permissions, they have the ability to send text messages
really however they see fit.

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

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

Well, the folks at Jawa-Cylon had sort of run
afoul of this before they developed this system. The
first system they developed was when you would get to the
PIN entry page they would both send you a text message
and then post the PIN on the website, so that whoever was
doing it could just write the PIN in directly there. So,
there was really no way to verify that it was the actual
consumer who was receiving the text message that was
entering it. It could just be anyone who was going to
the website. So, there are certainly ways to circumvent
the process.

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

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

MR. SEGE: Thank you.

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

MR. SEGE: Yeah, everyone please stay after
lunch if you really want to get the really good stuff.
But there were two questions that arose that I believe
are properly placed to the aggregator. I’m with a
company called m-Qube, Incorporated, which is one of the
larger and longer lasting aggregators for commercial
messaging and billing.

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

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

There was another question about the
transparency of the message logs of the opt-in records. Again, the strength of this billing method is that it has handset authentication comprised of messages to a cell phone. Those message logs are possessed by the consumer on their handset; they’re possessed by the merchant on their side; they’re possessed by the aggregator that has the complete set of the exchange of messages; and they’re also possessed by the carrier.

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

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

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

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

MR. DEITCH: Thank you very much. (Applause.)
these charges from ending up on consumers’ wireless bills. To that end, we’d like to thank the FTC for its leadership on this issue and for actively participating in last year’s proceeding before the FCC and for bringing its first enforcement action against mobile crammers.

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

Last year, we adopted some new rules that essentially required non-carrier third-party charges to be in a separate and distinct section on the bill and for wireless carriers to provide the name of a service provider associated with the bill clearly and conspicuously, identify any change in service provider on the bill clearly and conspicuously, provide brief, clear, and non-misleading plain language description on the bill, and for wireline carriers, separate changes have to be separated by service provider and identify amounts that need to be paid to avoid disconnection.

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

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

MS. NIEJADLIK: Hi, I’m Martine Niejadlik with Boku Mobile Billing. I’m the Compliance Officer for our company, and I also am the VP of Customer Support. I come today representing the commercial space, and we are an aggregator of sorts, but a little different from a sort of historical aggregator as you might think about them.

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

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

So, our transactions are always consumer-initiated. These are people looking to buy something. We’re not marketing people; we’re not Googling -- putting ourselves in Google search or any of that sort of stuff. They are coming to a website, they want to make a purchase, they’re choosing mobile billing as the choice method for making that purchase. And then we are hosting the payment panel and the opt-in.

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

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

So, just a little bit about my history quickly, too. My prior three jobs before joining this mobile billing startup thing is I managed the fraud detection function at Paypal, and prior to that ebay, and prior to...
that Amazon. So, I am all about protecting consumers and preventing fraud. It’s not an easy job, but I think we need to all work at it. So, we’ll talk more about that today. So, thanks very much.

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

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

After years of consumers frequently complaining about unauthorized charges on their telephone bills and state and federal law enforcement agencies, especially the FTC, for years had been bringing cases against companies engaged in cramping, but the problem didn’t seem to be going away. So, in 2010, Chairman Rockefeller opened an investigation into cramping on wireline telephone bills. And through that investigation we found that third-party billing on the wireline telephone bills was a multibillion-dollar industry, and a large percentage of the third-party charges that were placed on consumers’ telephone bills were, in fact, unauthorized.

Further, we saw that the majority of the companies that were providing these so-called services to consumers, and the services I think we all know consisted of enhanced voicemail, email accounts that also sent you weekly emails with fashion tips and celebrity gossip updates, were illegitimate and appeared to be created solely to exploit the third-party billing system.

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

However, throughout and following our investigation, our office saw increasing indications that cramping was affecting wireless consumers as well. So, to examine this issue more closely, Chairman Rockefeller sent letters to the four major wireless carriers, AT&T, Verizon, Sprint, and T-Mobile, asking them for information about who they allow to place charges on their customers’ telephone bills and also any processes and steps that they had in place to curtail cramping on wireless bills.

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

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

As I said, the investigation into wireless -- cramming on wireless telephone bills is currently ongoing, so I won’t be able to comment on the specific information that we’re receiving, but I do look forward to contributing what I can to the questions that will be posed on this panel. And I thank the FTC again for inviting us to participate in this very important discussion.

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

Now, I’m here today -- first of all, I’d like to thank the FTC for inviting us. We’re very honored to be here. Consumer protection is most of what we do. We are vendors to the carriers, and enforcing the regimen of two-factor authentication and the marketing rules are really the core part of our jobs to them. At the same time, we also serve merchants, so we actually are the ones who administer and supervise this system on a day-to-day basis. So, we do have quite a bit of information about how it works and, you know, we’re quite proud of the strengths of it. If there’s any way in which consumer protection can be increased, we definitely always are at the forefront of those ideas.
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1. Over the years, we have tried to assume a leadership position in addition to our role as vendors to the carriers to come up with new ideas and new ways to enforce consumer protection throughout our industry. So, we participated in the formation of the very detailed and also very comprehensive consumer best practices rules. They’ve been characterized a little bit today, but actually I think what we need to actually, you know, read and familiarize one’s self with the rules before -- you know, before opening critiques.

   The question is how are they implemented. And the question is how are they monitored and enforced. So, another thing that we’ve introduced in the industry, we performed for many years, is the vetting of merchants, which is something that we’ve done for many years, we continue to do today, and that’s become an industry standard.

   We also have always performed in-market monitoring, not only of the marketing, but also of the actual messaging and opt-in logs to detect trends in that -- that could be of concern. We act against when we see merchants whose patterns seem to be of concern.

   Sometimes it’s at the initiation of the carriers, and more often it’s at our own initiative.

   We’ve also -- it’s also -- consumer protection is a big part of what we do, and also a big part of our agenda, if we have one, is to advance the use of this channel in our society for all kinds of ways that improve our experience as citizens. So, from early 2010, we were called upon in an emergency basis to process the charitable contributions to the Haiti campaign. We had to unroll high-capacity buy-ins and funding for major charities in a period of a couple of days, including nationwide telethon, telecasts in every single major network. And we did succeed in processing over $40 million in charitable contributions during the 10 days following the Haiti earthquake.

   Last year we introduced a concept at the Federal Election Commission to permit citizens for the first time to support he candidates of their choice by texting a keyword to the candidate’s short code. It’s a program that permits federal political committees to take all of their marketing and turn it into mass fundraising. The program was very successful. Again, we had very broad support from the carriers who had to act quickly in a regulatory environment that was new for them. And that program was a great success, and we continue to have great interest from the political community in that program.

   In addition, now we’re -- we’ve added in our transaction, which is their handset.

   So, this is an exciting new transaction channel for merchants and consumers. For merchants, it provides convenient, verified, and quick transactions. For consumers, it provides strong authentication. And premium SMS also is strong authentication because it’s two-factor authentication, verifying not just that someone knows their account information, but that someone has an authenticated object present at the time of the transaction, which is their handset.

   So, I also come equipped to make an announcement about an improvement in policy that we’ve now decided to publicize today with respect to premium SMS especially. I will touch upon a couple of things from the previous sessions. There was a lot of discussion of refund rates. To us, refund rates are not indicative of cramming necessarily. So, I don’t know that much about the Wise Media case, but for example, a refund rate of 30 to 40 percent indicates to us that consumers were receiving messages telling them that they’d been billed, causing them to call up for refunds.

   So, I’m sure that Wise Media is a horrible case; on the other hand, in a sense it’s a success case if the refund rates were that high. Our channel was used, and billing was married to messages, and consumers were aware and demanded refunds.

   So, there are other reasons why refund rates are not necessarily the best indication to us in our experience on a day-to-day basis. First of all, when a consumer -- as I mentioned, when a consumer actually 36 (Pages 141 to 144)

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I’ve seen is contained in a ex parte letter that the California Public Utilities Commission filed with the FCC earlier this year comparing the refund levels from wireless carriers reported to them under their state rules between 2011 and 2012 calendar years. In 2012, the refund rates had dropped in half.

MS. MITHAL: And another question, just to add to this topic, is should there be some kind of national requirement of reporting regarding refund rates. I know that California has that registry that you’re talking about. So, if anyone wants to answer either of these questions about whether refund rates are meaningful and whether they should be reported nationally.

MS. NIEJADLIK: I have a few comments, actually. And I’m going to use a little bit of experience from sort of the credit card space to talk about this a little bit. First of all, one of the things that is pretty clear from what we see in our data is that, as Mike alluded to, there are not consistent polices that are being implemented at the carrier level, nor at the aggregator level today.

And, so, I mean, this is like real, real discrepancies, to the extent of one being, you know, 4X the other one, very huge numbers. And, so, if you -- I think one of the first things we have to do is we have to sort of figure out what an appropriate refund policy looks like, and that doesn’t mean every time the customer calls they’re going to get a refund either. I think it really does need to balance potential abuse of the system with, you know, giving the consumer refund when it’s warranted. I mean, they absolutely should be protected when it’s warranted and shouldn’t be getting refunds when it’s not warranted. So, that would be the first thing, I think the policies are inconsistent.

Secondly, one of the things that works really well in the credit card space that I don’t see as much of in the mobile billing space today is clear reason codes as to why the consumer is being refunded. That’s something that, you know, is always categorized and goes through a very different process. If you call up your credit card and you tell them that fraud’s been committed, you will have a different process than if a merchant didn’t deliver you some good that you purchased. I think we need to get there here as well.

And then the third thing I’m seeing is an inconsistency, also, and perhaps an incorrect, I would argue, measurement of refunds. And what I mean by that is I’m seeing providers who are looking at refunds in a particular month as the numerator of the transaction -- of the equation and dividing that by the activity in

MS. MITHAL: And, actually, Alan, you’re bringing up a topic that I think some other panelists want to discuss, that’s the topic of refund rates. So, I’m actually going to dive right into that.

So, we are, as we know, talking about, you know, general additional strategies that could be used to reduce mobile cramming. And a topic that earlier panelists touched on is the idea of using refund rates to see if it’s appropriate to suspend or terminate certain content providers with high refund rates. Does anyone have any comments about that? Mike?

MR. ALTSCHUL: Well, I can report, the carriers are doing exactly that. They do monitor the consumer complaints and refunds and use it as a trigger. Different carriers, I understand, have different thresholds, but in talking about refund rates, we also have to remember this is a metric that’s uniquely within the carrier’s control. A carrier can be very, very generous in providing customers with refunds and extending those refunds over very large numbers of months if charges have been on a bill for some time, increasing the refund rate, being consumer-friendly, having a larger number, a larger refund number than a carrier that is not as generous in providing refunds.

Probably the most significant real data that receives their premium SMS PIN message and the welcome messages, those are times when they ask for refunds, so those are supported by high refund rates. Whereas if they were not to see those or those were not properly configured, one could see lower refund rates.

Most of these programs come, like many Internet programs, with a money-back guarantee, in which people are encouraged to essentially try before they buy. Also, other channels for mobile media just do not permit refunds, so purchasing on the various operating system stores, there’s no way to get a refund, whereas in our channel refunds are liberally granted.

And all of the rules and mechanisms we have are premised on our concept that we offer a payment means, which is much more authentic than other payment means, like a credit card, either credit card not present or credit card present transactions. Our channel is much more authentic. But the problem -- the issue that we must address and which we always try to address is the fact that consumers may not be familiar with the fact that their cell phone bills can be charged for -- you know, for these kinds of purchases. So, that puts us in a position where we always favor much higher, much greater degree of disclosure than a normal online or credit card transaction.

I’ve seen is contained in a ex parte letter that the California Public Utilities Commission filed with the FCC earlier this year comparing the refund levels from wireless carriers reported to them under their state rules between 2011 and 2012 calendar years. In 2012, the refund rates had dropped in half.

MS. MITHAL: And another question, just to add to this topic, is should there be some kind of national requirement of reporting regarding refund rates. I know that California has that registry that you’re talking about. So, if anyone wants to answer either of these questions about whether refund rates are meaningful and whether they should be reported nationally.

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And, so, I mean, this is like real, real discrepancies, to the extent of one being, you know, 4X the other one, very huge numbers. And, so, if you -- I think one of the first things we have to do is we have to sort of figure out what an appropriate refund policy looks like, and that doesn’t mean every time the customer calls they’re going to get a refund either. I think it really does need to balance potential abuse of the system with, you know, giving the consumer refund when it’s warranted. I mean, they absolutely should be protected when it’s warranted and shouldn’t be getting refunds when it’s not warranted. So, that would be the first thing, I think the policies are inconsistent.

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And then the third thing I’m seeing is an inconsistency, also, and perhaps an incorrect, I would argue, measurement of refunds. And what I mean by that is I’m seeing providers who are looking at refunds in a particular month as the numerator of the transaction -- of the equation and dividing that by the activity in
that month. And the reason that’s problematic is because a lot of the people who are using the system to conduct the billing have changes in volumes from month to month. And, so, if my volume is going up, and I’m using volume from, I’ll just argue March, and I’m comparing it against refunds for March, which are arguably, many of which from transactions that are in January, I now have an understated refund rate and vice versa if my business is going down, I have an overstated refund rate, which could cause, you know, red flags to go off when it’s not warranted. And, so, I think the calculation there also needs a bit of work.

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

MR. SEGE: I would also say that in terms of refund rate, you know, it definitely is a metric that, you know, an operator, someone who actually conducts the business, can use in conjunction with other data to reach conclusions. There’s no doubt about it. However, it’s really unregulable, because businesses will make their own decisions based on any number of factors about their refund polices, so that what it means for one business or another business or another carrier.

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

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

MS. MITHAL: And Delara?

MS. DERAKHSHANI: Sure. So, we actually do think that refund rates do inform the discussion of just how widespread the problem of mobile cramming is. We do think that more needs to be done, but one thing that I will note is that this -- the refund rate mechanism really only identifies the problem after it has occurred. And we really strongly believe that more proactive measures need to be taken to address the issue before it happens, before consumers are hit with those charges. So, I will put that.

MS. MITHAL: And Dave?

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

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

MR. TRILLING: We want to continue to talk about refund rates but maybe with a little bit of a different angle. Mike, you’ve mentioned that the carriers, and Martine alluded to this, different carriers and different aggregators may have different refund rate thresholds before they take action against a content provider.

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

MR. ALTSCHUL: Well, I can’t give you an authoritative answer across all the carriers and all the customers, but carriers have reported that when they do detect out-and-out fraudulent cramming, and I mean, can identify the pattern, yes, they do go back, they look at the premium SMS charges on consumers’ bills who have not come forward and do proactively, in appropriate cases, act to remove and reverse those charges, not in every case, but in proactive cases. Just one quick word, though, about different carriers and different thresholds. Much as in the retail space, there is competition on refund friendliness.

Everybody knows that Nordstrom’s and L.L. Bean are very proud of a no-questions-asked refund policy. You hear
this maybe apocryphal story they even take back goods
that they’ve never sold with a smile to keep customers
happy.

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

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

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

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

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

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

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

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

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

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

MS. MITHAL: And Martine.

MS. NIEJADLIK: Yeah, I mean, I don’t think you
can compare the -- people get credit cards because they
want to use them as a billing device. That’s necessarily
the reason why people get their mobile phones. Now, many
people may want to use them as a billing device, but it
doesn’t necessarily equate. And, so, there’s no doubt
that consumers are not as aware, certainly today, that
their mobile phone is a billing device. And I think
there’s a lot more consumer education that needs to
happen.

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

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

And, so, even if they have refunds that are
occurring, which, by the way, to Alan’s point, like maybe
a good thing, it would be worse if there were no refunds occurring and people were unhappy with the charges that were on their bills. But I don’t think that’s necessary -- I mean, I do agree completely. It’s a great indicator, and people should be watching it. Anybody in this space should be watching it and should be taking action and at least looking at it as an indicator to whether an investigation needs to be conducted, you know, further than that. But I don’t think an automatic, you know, 8 percent or 13 percent or whatever the numbers are we’re throwing out there right now would be appropriate at this time.

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

MS. NIEJADLIK: Let me address that quickly, actually, because, by the way, Boku operates in 68 countries on over 260-something, I think, carriers now. One of the things that we’ve done in the U.S. over the past few years is we’ve established these direct connections to carriers, and so we bill via the direct connect as opposed to billing via premium SMS. And one of the features that offers us is the access to a refund API. And, so, instead of having to go out of band and issue refunds via, you know, a check and you give me your bank account and all those types of things, we can actually issue refunds directly back to the carrier bill now. I’ve just got a little tool, I can push a button, and a refund shows up on the consumer’s carrier bill. And what that does is it gives the carrier also visibility into the fact that these refunds are occurring.

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

MS. MITHAL: And Delara?

MS. DERAKHSHANI: So, while I won’t get into the specifics of exactly which entity should be responsible to whom and for what purpose, I will say that we strongly believe that all entities in the marketing and billing chain do have a role to play in ensuring the integrity of the third-party marketing and billing process. You know, nobody should be let off the hook, especially when all these entities are deriving money from the process.

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

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

MS. NIEJADLIK: Again, I just would reiterate I think it’s important to segment the population. That’s an important aspect of looking at the actual rate. You know, should there be other vehicles for consumers to report? I mean, we, for example will look at contact ratios, so these are just instances of consumers contacting us with any sort of complaint. It may end up in a refund case; it may not.

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

I think in mobile billing, and one of the reasons I joined Boku is because -- and Alan’s talked about this a couple of times -- the type of authentication that’s occurring in mobile billing is a step function better than in other at least online payment methods. I’m not going to speak to proximity.
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<td>payments where people are standing in front of a merchant, but certainly online. You know, when you use your credit card, or let’s say somebody uses your credit card today to buy something, your credit card doesn’t light up in your wallet and start beeping and require you to push a button. It doesn’t do that. But when the mobile billing is occurring, your phone is lighting up, and it is requiring you to do something. And that is a very unique aspect of the system that really does make it more secure. And I think consumers actually really like that, as well. I mean, security is definitely something that we want from them, also. So, nothing is bulletproof. I mean, we should never strive, I think, to have a 0 percent fraud rate in anything. You know, there’s counterfeit cash out there and counterfeit checks, and with any payment method you have there’s going to be some level of fraud occurring, but certainly we should figure out exactly where the problems are occurring and target rules to address those problems while allowing the legitimate business to go through. I think that really should be everybody’s goal.</td>
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<td>MR. TRILLING: Alan, did you have a comment before we switch topics?</td>
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<td>MR. SEGE: Yeah, there was one question about</td>
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<td>reporting suspicious activity to law enforcement. That is something that we do. And when we’ve had -- we’ve had a good degree of success with that. In terms of other metrics besides refund, you know, really we have two kinds of security techniques, like I guess any company who’s a payment processor, you know, like us. We have security techniques that -- we have security techniques that whose strength comes from the fact that they’re well known. And double opt-in is really -- is really that. And then we have security techniques whose strength comes from the fact that they arise out of our rich data and our ability to analyze it, detect trends. Now, that second one is really like all of these other things, like refund rates, like monitoring, like auditing, it’s post facto, it’s after bad activity has taken place, then we’re very good at identifying it and stopping it. So, I was kind of hoping for this panel to also be able to discuss any way of improving our security techniques before transactions initiate. And that -- to us, that’s valuable. That’s valuable turf. And we have techniques that are available to us in this industry that we believe are not exploited right now which we’re prepared to announce a new policy on.</td>
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<td>MR. TRILLING: Perhaps we can work that into</td>
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<td>talking a little bit more specifically about the double opt-in process. We talked this morning about the different modes of handling the double opt-in process. Are they all equally effective? And what can be done to improve any of them?</td>
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<td>MR. ALTSCHUL: Well, from some of the examples we saw, we’re constantly learning how to be better and more effective in our vetting, media monitoring, because obviously to opt in you have to be knowledgeable and informed and the information particularly on the web disclosures needs to be clear and conspicuous as the best standards require.</td>
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<td>Just as an aside, where there’s a little snickering in the audience on the last panel about the 125-pixel requirement, which was a technical requirement, we saw how easy it was to evade or deceive. That came from a state attorneys general consent decree with the industry as the floor, so the industry has done through learning the vulnerabilities and going back and improving our protections for consumers is to go beyond and actually not just measure pixels but look to make sure it really is clear an conspicuous. It’s this constant improvement of our knowledge and tailoring our processes that will best protect consumers in this space.</td>
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25 regulatory compliance, the variety of rules out there
24 role, you know, in compliance is to not only deal with
23 to comply with the rules that do exist today. Part of my
22 important to figure out, you know, how to get any biller
21 the room would condone that. I think it would be
20 you know, are being used, and I don't imagine anybody in
19 phone number, it's not going to work because you have to
18 opt-in is an affirmative opt-in, not an opt-out or a
17 message flow on a monthly basis to make sure that the
16 looks at each of these premium subscription codes for the
15 and the monitoring of all the -- every premium SMS code
14 and the message flows has, again, been set up and now
13 opt-in is not compliant with the industry best practices
12 with rules is they become an inflexible rule. The 125-
11 MR. ALTSCHUL: Well, once again, the problem
10 enshrined into a rule on a national basis or into law?
9 handset authentication, and that operational
8 advocating for for quite some time is that when it comes
7 MR. ALTSCHUL: Okay, thank you. So, we've
6 and a half, have, you know, come into agreement on
5 do not host the opt-in.
4 transactions through a channel.
3 concept of diffused responsibility for verifying
2 things that frustrates their own investigation is the
1 Witteman from the CPUC earlier today, where he said that

that we have to comply with, but also all the CTIA and
MMA, you know, rules as well.
And as I mentioned before, I think, you know, for folks like us, hopefully we're the good guys, you know, who are on-blocking merchants. You would not be able to come through our platform and do negative opt-in.
It wouldn't work that way. And, so, you know, maybe it behooves us to spend a little bit of time and figure out how to enforce making sure that the rules that have been established, which I think, by the way, are a very great set of rules, are actually being utilized.
MR. ALTSCHUL: And just to be clear, negative opt-in is not compliant with the industry best practices and the monitoring of all the -- every premium SMS code and the message flows has, again, been set up and now looks at each of these premium subscription codes for the message flow on a monthly basis to make sure that the opt-in is an affirmative opt-in, not an opt-out or a negative opt-in.
MR. TRILLING: We want to go back to Alan to expand on what you alluded to in terms of changes that industry can take to make the double opt-in process even more secure.
MR. SEGE: Well, actually, I think that this also -- a jumping-off point is a comment by Chris

very often be for very reputable merchants, and there are
good reasons why an aggregator will not host, but from
day forward, we’ve made the decision that we will not be offering transactions through our system where we do not host the opt-in.

MR. TRILLING: Okay, thank you. So, we’ve talked about the double opt-in process and industry’s role in enforcing the double opt-in rules. Is there anything about the double opt-in process that should be enshrined into a rule on a national basis or into law?
MR. ALTSCHUL: Well, once again, the problem with rules is they become an inflexible rule. The 125-pixel requirement from the Florida State AG consent decree is a good example of a rule or a requirement that was imposed through government regulation that was very well intentioned at the time but just was a springboard to the next level of deceptive practices by those who affirmatively want to go out and deceive consumers.

So, the industry at all levels should protect consumers and to make this a trusted environment has to go beyond those rules and constantly evolve its monitoring in the way it protects consumers to make sure that the protections are state-of-the-art as the threats evolve accordingly.

MS. DERAKHSHANI: So, we actually disagree that
rules would be inappropriate. Our experience in the landline context taught us that self-regulatory measures are not enough. And while we recognize that there are very many valuable uses for these third-party services, we at Consumer Reports and Consumers Union believe that a regulatory mechanism is necessary to help distinguish between these services that consumers actually want versus unauthorized charges that consumers did not ask for and may not even be aware of.

MS. MITHAL: Okay. And, Alan, if you just want to make one last comment, and then we’re going to move to the next topic.

MR. SEGE: I did want to comment that, you know, the advantage that we have in industry self-regulation is most of what we do is prior restraints on speech. Most of what we do is requiring vendors to market things in certain ways and not market things in other ways. And we do that preemptively before they engage in the speech. So, it’s a form of regulation which is swifter, but also it is a tool that a government cannot wield that we can.

MS. MITHAL: Okay, so we actually have an audience question that is a nice segue into our next topic, and that’s about blocking third-party charges. An audience member has asked: Why not change the default for commercial third-party charges over PSMS so that there is a default block, Mike?

MR. ALTSCHUL: Well, there is a default block, and that’s what this double opt-in is all about. No premium charge can be placed on a customer’s bill until they have affirmatively opted in at the time they are purchasing or seeking that service. So, the default is no charge can be placed on a customer’s bill until the consumer has affirmatively responded by texting, not just reading and opening an email, but affirmatively responding with an opt-in text.

MS. MITHAL: And, Martine, did you have something to add?

MS. NIEJADLIK: Yeah, I mean, we are -- we don’t believe blocks is the answer. I think generally, by the way, when you’re managing risks, blocks is something that is a pretty extreme action to take. The beauty of mobile billing in addition to the double opt-in, particularly with the type of implementation that we use, which is the proper type of authentication, is that consumers also have other controls in their hand.

One of the things that’s unique about mobile billing is the stop command. So, you know, in between an auth. and a settlement on my credit card, I don’t get the opportunity to stop the charge from occurring. In the mobile billing space, I can send the stop command to a short code at any point in time. I don’t even have to be in the middle of a transaction, and it will automatically cancel anything that’s in progress. This is something that’s completely in the consumer’s hands today, and we think, by the way, probably if we educated more, consumers may leverage more.

But, no, I don’t think blocks would be the appropriate answer. We are -- we’re trying to really create a competitive environment where consumers have choices and options for payments, and we believe that the alternatives to mobile billing, particularly for those folks who don’t have access to other payment vehicles, are things such as go to the store and buy a prepaid card and use that prepaid card online, which then, by the way, has a bunch of fees associated with it and your funds are going to expire after a certain amount of time, and all sorts of other negative implications. And, so, let’s think about the alternatives for those folks before we decide what their default option should be.

MS. MITHAL: And, Melanie --

MR. ALTSCHUL: And just to be clear, carriers do offer blocks as an option for those customers who want to block either all charges on a family account or block charges on a specific device. And many carriers you need to check with your own carrier also provide the ability to block specific short code, premium SMS codes, and campaigns.

MS. MITHAL: And, Melanie, I think you had your card up.

MS. TIANO: Yes. So, I would wholeheartedly like to disagree with the suggestion that the double opt-in process is a default block system. I think that there have been enough examples of the double opt-in process not working that that can’t be considered a reliable blocking mechanism when there are so many ways to work around that system.

As far as whether or not the default should be a block, I’m not at a place where I can say what the Chairman feels is the appropriate measure for that, but I will say that throughout the wireline investigation we saw repeatedly that, one, even if customers requested that a block be put in place after the fact it often didn’t happen, and there were lots of problems with consumers repeatedly getting charged for things that they had requested being blocked; and, two, the purpose of -- the whole idea of blocking after the fact depends on the consumer to check their bills and to notice that they’ve been charged and to call and request the block.

And what I think we’ve heard a lot of today is...
that consumers aren’t noticing these charges on their bills and they’re not recognizing that they can call the carrier and request a block, so that the process as it’s being set up, as it is set up right now, is not working.

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

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

The concept of putting a block on this industry over a payment method which in its conception is much more authenticated than any other payment means, a payment mechanism which is widely deployed throughout the world as a major payment mechanism for banked and unbanked in many developed and undeveloped countries, to actually eliminate it in this country it really is, you know, throwing away, you know, something which is very beneficial for industry, for innovation, and most of all to consumers, like me, by the way, who would prefer to have an authenticated transaction as opposed to an inauthentic transaction.

MS. DERAKHSHANI: And Delara?

MS. MITHAL: And Delara?

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

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

MS. NIEJADLIK: Yeah, I mean, look, again, the industry is in its infancy. There are rules. I think if people are following the rules, those things don’t happen. The stop command is a requirement from the CTIA that when you get a stop command there are certain actions as a biller that you have to take, and canceling the transactions is one of them.

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

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

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

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

MS. MITHAL: Okay.

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

A stop command is canceling anything that’s in progress or negatively sort of responding to a charge that somebody is attempting. So, there -- I believe the stop command is one of the CTIA rules.
MR. ALTSCHUL: Right.

MS. NIEJADLIK: The block is different.

MS. MITHAL: Okay. And I think --

MR. ALTSCHUL: And that’s why I had raised my card, just to make clear, our monitoring every month the message flows are checked so that our monitoring sends stop to the premium SMS programs that they have opted into and looks for the appropriate response, the subscription gets stopped. They text help and look for a response, that what are your questions, can I answer them. So, a crammer who goes out of their way to ignore a stop will be picked up by the monthly touchpoint that we monitor for.

MS. MITHAL: Right, and going back to blocks, you mentioned that certain carriers are offering blocks. Are they disclosing that option to consumers?

MR. ALTSCHUL: Well, all of the carriers we’re familiar with offer blocks. They offer, as I said, a total block on third-party charges; they also offer blocks by individual devices or phone numbers within a family plan. And many, if not all, the carriers have additional services where individual programs themselves can be blocked.

I was thinking, Alan talked about contrasting this to some other debates that you have, but there’s been a national debate in the communications field about net neutrality. And we’ve been defining premium SMS as third-party charges. One of the larger policy issues associated with considering a default block on third-party charges is that those advocates for net neutrality would find that carriers would be discriminating against third-party content that is billed through third-party charges while carrier-sponsored content would come in because it wouldn’t be a third-party charge.

So, this gets complicated. It’s a little bit like that movie title.

MS. MITHAL: Okay, we’re actually going to move on to another topic, but, Alan, gets to respond first if he wants on the next topic.

Jim, did you want to ask your question?

MR. TRILLING: Did you want to respond, Alan?

MR. SEGE: Oh, I just wanted to say part of our hosting authentication means when the word “stop” comes through on any merchant in our system it’s just stopped. A stop confirmation message goes out and billing is stopped.

MS. DERAKHSHANI: Assuming you’re a good actor, but not for bad actors. Thank you.

MR. TRILLING: Okay, apparently we have a malfunctioning card that’s doing acrobats.

MR. SEGE: Whether we’re good or we’re bad, I mean, you know, it is what we do. I mean, we can -- we’re willing to, you know, stand up behind it and I don’t know how to respond to that. I didn’t say that we’re good or bad; I just said that this is what we do.

MS. NIEJADLIK: I do think it’s one of the benefits of having aggregators, though, very similar to a payment service provider in the credit card space. You know, you don’t go to Visa and get yourself an account. You go to a processor who has to on-board you and do vetting and get you an account. And, you know, I think m-Qube and Boku and services like ours are providing that service and helping to ensure that the rules are being complied with.

MS. MITHAL: And this is a good point for us to ask the audience question, that will help us with the next topic. How do you protect the huge and growing prepaid wireless market who never see a wireless bill?

MR. ALTSCHUL: I think the media marketing and the monitoring of the message flows is the best way of protecting the prepaid market because that detects any problems before consumers can experience it and gives the industry an opportunity to cut off abuses.

MR. SEGE: Generally speaking, the prepaid operators do not have premium SMS. There could be exceptions, and I don’t want to be completely quoted, but I do know that predominantly to be true.

MR. TRILLING: In the Wise Media case, many consumers complained that the charges were buried in their phone bills. For example, one consumer complained that the charge appeared on page 18 of a lengthy phone bill. And on a related note, this morning we heard from Paul Singer that billing descriptors, if consumers actually located the charge on their bill, in the Eye Level Holdings matter may have been as opaque as standard rate plan.

Is self-regulation working when it comes to the way that charges are disclosed on bills. And, if not, what should we be doing differently?

MR. ALTSCHUL: This is another lesson learned that the industry has proactively gone back and, you know, protected consumers against misleading descriptors so that when a premium SMS program applies for a short code, the bill descriptor is included in the information they provide the registry, which is provided to the carriers for their review to make sure that the descriptor is clear, conspicuous, and not misleading to consumers in how it describes the actual service.

This was not something that the industry originally had done, and when it was clear that people
1. were abusing the system, it’s something the industry went
2. back and did.
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.
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.
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
26. there are very many of us who no longer opt to get a
27. paper bill and will use the convenience of getting billed
28. online.
29. And what all this means is that the information
30. is provided to consumers, but there is a responsibility
31. for consumers to monitor their bill, just as we’ve all
32. learned with credit cards that that’s something we need
33. to do.
34. **MR. TRILLING:** Martine?
35. **MS. NIEJADLIK:** Yeah, I just want to add, I
36. sort of alluded before to the fact that the industry is,
37. you know, making headway and improvements. One of the
38. things that we’ve seen also get better over the past few
39. years is the opportunity to put what we call a dynamic
40. billing descriptor out there, and so we want to describe
41. the charge as best as we can, right? Again, we’re
42. managing customer support. Our phone number is on the
43. bill. Our phone number is in the SMS messages. It’s in
44. our best interest to make sure that the consumer
45. recognizes the charge when they see it and they’re not
46. calling up just because it says whatever that thing is
47. you said it said before.
48. So, that’s something that we follow, and as an
49. aggregator, if you will, we will always pass through
50. specific descriptions of exactly what they bought from
51. the merchant and have it show up on the bill. And
52. that’s, again, relatively new functionality that’s come
53. out in the past couple years.
54. **MS. MITHAL:** Okay, we’re actually running out
55. of time, but I want to ask a quick question about the
56. complaint process. So, do carriers have or does a
57. particular carrier have a refund policy that all its
58. employees are expected to follow, so that, for example,
59. if a consumer calls, they’re not at the mercy of one
60. sales representative versus another? Martine, do you
61. have your card up?
62. **MS. NIEJADLIK:** No.
63. **MS. MITHAL:** Oh, okay. And I’ll broaden this
64. question in case someone might be able to answer this,
65. also. If a consumer disputes a charge, should the
66. consumer be allowed to delay payment without cutting off
67. phone service or negatively affecting the consumer’s
68. credit? Why don’t we start with Delara, and then we’ll
69. go to Martine.
70. **MS. DERAKHSHANI:** Okay, so two points. First,
71. we will note that many consumers are still confused about
72. who to contact in order to resolve a billing dispute.
73. So, we believe that straightforward, standard dispute
74. resolution practices are necessary to clearly spell out
75. refund policies and explain to consumers who to contact
76. in the event of an unauthorized charge.
77. Secondly, what was the other point of your
78. question?
79. **MS. MITHAL:** The other point was the credit.
80. The point was whether they should be allowed to delay a
81. charge and it not affect their credit and --
82. **MS. DERAKHSHANI:** Yes, I think the obvious
83. answer is that service should not be cut off, if there’s,
84. you know, in the midst of a billing dispute, so, yeah.
85. **MS. MITHAL:** I think Martine was next.
86. **MS. NIEJADLIK:** Yeah, the one point I want to
87. add to that is as I mentioned before the types of
88. merchants that we work with, we’re seeing a lot of
89. interest from various types of verticals, as we call
90. them, to use this type of billing. And when you think
91. about other types of verticals, and these are things such
92. as video streaming, movie streaming, parking, there’s
93. pizza companies who want to be able to sell a pizza and,
94. you know, put the charge on your mobile. If you don’t
95. pay for the pizza, you’ve consumed the pizza, and, so,
96. you probably -- you know, that probably shouldn’t be
97. allowed that you just get to not pay for your pizza.
98. And, you know, I think obviously with respect
99. to cram-type charges, you would not want the consumer to
100. have to pay, but again, there’s got to be a reasonable
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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.
7 MS. MITHAL: Right, and should that cut off
8 their phone service. That’s just the --
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.
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.
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.
24 Number two, all the major carriers have adopted
25 a policy known in the industry as one-and-done, so this

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.
5 MS. MITHAL: And Alan.
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
down to the merchants. It doesn’t affect, as much as I
11 understand from our contracts, it doesn’t affect the
12 status of the person’s account at the wireless carrier.
13 I also wanted to mention one thing, which is,
14 you know, the topic of this panel is future measures and,
15 you know, we’ve described how premium SMS, when there’s a
16 singular point of responsibility and you know the double
17 opt-in process is being done, is very strong. One
18 potential threat to that that has come up in 2011 and we
19 believe that we solved it technologically is that certain
20 of the smartphone operating systems have calls in them
21 which are -- which create a vulnerability. And Lookout
22 Mobile described them, publishing the phone number to
23 developer, giving the ability to send SMS, receive SMS,
24 edit SMS, and delete SMS.

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.
9 MS. MITHAL: Okay.
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.
17 And with that, I want to thank everybody who
18 participated on panel three.
19 (Applause.)
VERMONT’S recent study, which made news today, shows that
80 percent of the consumers surveyed didn’t even know
they could be charged for third-party services on their
mobile bills. Their data also showed that although
Vermont has only received a few dozen complaints in this
area over the past few years, when consumers were
surveyed, 60 percent of those who responded, this is if I
took good notes, of those who responded then realized
they had been crammed, even though they hadn’t even
complained. And more dramatically, in one of the
landline cases that the FTC did, called INC21, 95 percent
of the consumers who had been charged for the products
were unaware they had been charged before the case.

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

In Wise Media, thousands of consumers were
billed for services they’d never heard of or that they’d
expressly declined. One consumer’s charge appeared on
page 18 of her lengthy bill. Some consumers didn’t even
get the text message subscriptions that they supposedly
signed up for and supposedly wanted. And many consumers
had difficulty getting refunds, whether it was from Wise
Media or the carriers.

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

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

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

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

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

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

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

Carriers could also publicize refund rates to
provide more transparency about the problems encountered
with a particular content provider. And another idea was that for recurring charges content providers could seek consent prior to each charge.

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

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

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

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

So, in closing, I’d like to thank the fantastic team that put this together, this workshop. I’ll name them all, and if I leave somebody out, I apologize:

Stephanie Rosenthal, Andrew Schlossberg, Duane Pozza, Jim Trilling, Russ Deitch, Larissa Bungo, Malini Mithal, Samantha Konstandt, Carrie Gelula, T.J. Peeler, Wayne Abramovich, Cheryl Hackley, Bruce Jennings, Khouryanna DiPrima, Laura Brandon, and Emma Johnston. It takes a village to put together a workshop.

So, thanks for joining us.

(Appause.)

(Whereupon, at 2:57 p.m., the workshop was concluded.)
Mobile Cramming Roundtable

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