

FEDERAL TRADE COMMISSION

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EXAMINING PHONE BILL CRAMMING

Wednesday, May 11, 2011

9:07 a.m.

Federal Trade Commission  
FTC Conference Center  
601 New Jersey Avenue, N.W.  
Washington, D.C.

## FEDERAL TRADE COMMISSION

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	<u>PAGE</u> :
Welcome	3
By Shameka Gainey	
Introductory Remarks	5
By David Vladeck	
Session 1: Cramming -- How Does it Happen	14
and What is the Injury?	
Session 2: What Steps Does the Telephone	63
Billing Industry Take to Detect,	
Monitor, and Prevent Cramming?	
Session 3: Approaches to Cramming Prevention:	112
How Are the Mobile and Landline	
Billing Platforms Different?	
Session 4: Potential Solutions to the	156
Cramming Problem	
Closing Remarks	210
By Chuck Harwood	



1                   We also want to remind you that we're still  
2 accepting comments, so you can submit those comments via  
3 e-mail at ftc -- the [crammingforum@ftc.com](mailto:crammingforum@ftc.com), and you have  
4 until May 31st to do that.

5                   So, as you can tell, we have a court reporter  
6 here that's going to transcribe the events of today, and  
7 the transcript will be posted on the cramming forum  
8 website.

9                   So, feel free today to participate. We want an  
10 open discussion here. If you have questions that you  
11 think are pertinent to what the panelists are talking  
12 about, raise your hand and we'll have someone come around  
13 with a microphone so you can ask your questions. You  
14 also will have an opportunity at the end of each panel to  
15 ask questions or to give comments.

16                   Before we get started, I have a few  
17 housekeeping items that I need to go over. First, you  
18 need to keep your name tag on at all times. Anyone who  
19 goes outside of this building without an FTC badge will  
20 be required to go back through security and the x-ray  
21 machine before you can reenter the conference center.

22                   In the event of a fire or evacuation of the  
23 building, please leave the building in an orderly  
24 fashion. Once outside the building, you'll need to  
25 orient yourself to the New Jersey Avenue. Across the

1 street from the FTC is Georgetown Law Center. Look to  
2 your right of the sidewalk, and that's where we'll all be  
3 meeting. Everyone will be gathered by floors. You'll  
4 need to check in with the person accounting for everyone  
5 in the conference center.

6 In the event that it's safer to remain inside  
7 the building, we will tell you where to go here in this  
8 conference center. If you suspect any suspicious  
9 activity, please notify security.

10 The restrooms are on the other side of the  
11 lobby. You can follow the signs or ask security  
12 personnel where those are.

13 Finally, please turn off your cell phones or  
14 put them on vibrate. And we really look forward to  
15 having a productive day and open discussion. And, once  
16 again, thank you all for coming.

17 At this time, I'd like to introduce our  
18 Director of the Bureau of Consumer Protection, David  
19 Vladeck.

20 **(Applause).**

21 MR. VLADECK: Shameka is a tough act to follow,  
22 but good morning. Welcome to the FTC conference center  
23 for a workshop: Examining Phone Bill Cramming, a  
24 Discussion. As Shemeka said, I'm David Vladeck, I direct  
25 the FTC's Bureau of Consumer Protection. These remarks

1 are my own. They shouldn't be attributed necessarily to  
2 the Commission or any individual commissioner.

3 So, we're hosting this forum today to examine  
4 the persistent and harmful practice of phone bill  
5 cramming, the placement of unauthorized charges on a  
6 consumer or business' telephone bill. This is not a  
7 trivial matter. The crammers have placed literally  
8 hundreds of millions of dollars in bogus charges on  
9 consumers' bills.

10 The purported goods and services for which  
11 crammers have billed consumers range from  
12 telecommunication services, like long distance and  
13 collect calls, to goods and services unrelated to the  
14 telephone, such as web hosting, directory listings, club  
15 memberships. These bogus charges can be one-time hits,  
16 but more often they are recurring monthly charges. Both  
17 individuals and businesses are victimized by these scams.

18 For more than 15 years, the Federal Trade  
19 Commission has engaged in a sustained campaign to attack  
20 and prevent cramming. Working with our partners in  
21 federal and state law enforcement, we bring enforcement  
22 actions to halt cramming and to provide redress to  
23 consumers. We conduct business and consumer education  
24 and outreach programs to raise awareness of the problem.  
25 And we work with the telecommunications industry to

1 prevent and attack cramming.

2 Our enforcement cases, brought against crammers  
3 and the billing aggregators that place the cram charges  
4 on consumers' bills have resulted in tough court orders  
5 and obtained tens of millions of dollars in consumer  
6 redress and refunded charges. Additionally, state law  
7 enforcement agencies have brought hundreds of cramming  
8 cases to provide redress to consumers and to further  
9 prevent injury.

10 The U.S. Department of Justice has also  
11 prosecuted criminally crammers and brought civil actions  
12 to obtain penalties and injunctions against them. Now,  
13 in spite of this sustained anti-cramming effort by  
14 federal and state law enforcement agencies, cramming  
15 persists. Law enforcement agencies continue to hear from  
16 consumers who have been ripped off by cramming scams.  
17 Families and businesses continue to find charges on their  
18 phone bills for goods and services that they neither  
19 sought nor used.

20 Addressing this continuing problem will require  
21 law enforcers, the telephone billing industry, and  
22 consumer groups to work together to identify more  
23 effective means of preventing cramming, giving consumers  
24 more control over the types of charges that appear on  
25 their bills, and denying scam artists access to telephone

1           billing platforms.

2                       The recent action against Inc21.com's crammers  
3           -- and Doug Wolfe who litigated that case is here today  
4           -- demonstrates just how easy it is for consumers -- for  
5           crammers to use third-party phone billing platforms to  
6           cause millions of dollars of consumer injury. The Inc21  
7           crammers were able to place more than \$37 million in  
8           bogus charges onto consumers' phone bills. They claimed  
9           that the chargers were for web page hosting, business  
10          directory listings, and other services, but the court  
11          found that an astonishing 97 percent of the consumers --  
12          97 percent of the consumers -- who were billed had never  
13          agreed to purchase the purported services.

14                      What is even more troubling is the court's  
15          finding that only 5 percent of billed consumers were even  
16          aware that the bogus charges had been put on their bills.  
17          How did these crammers manage to perpetuate such a  
18          flagrant scam for long enough to take \$37 million out of  
19          consumer pockets? Well, the court found that after  
20          receiving consumer complaints and refund requests about  
21          the Inc21 charges, several telephone companies either  
22          suspended or terminated Inc21's ability to place charges  
23          on their subscribers' bills.

24                      But to evade these restrictions, the crammers  
25          created new dummy corporations with strawmen officers and

1       bogus addresses and used them to continue submitting  
2       their bogus charges to the phone companies. The ease  
3       with which these scams were perpetrated suggests that  
4       industry and law enforcement must do a better job to keep  
5       bad actors off the telephone -- telephone billing  
6       platforms.

7                 So, today's forum, we're going to focus on a  
8       number of important questions. How does cramming happen,  
9       and what injury does it cause? What steps does the  
10      telephone industry, billing industry take to detect,  
11      monitor, and prevent cramming? How do the mobile and  
12      landline billing platforms differ in their approach to  
13      preventing cramming? And what can government, industry,  
14      and consumer advocates do, going forward, to protect  
15      consumers from cramming?

16                Fortunately, we're able to draw on the  
17      considerable knowledge and expertise of our panelists  
18      today to answer these questions. We're fortunate to have  
19      distinguished panelists from the telephone billing  
20      industry, the consumer advocacy community, and state and  
21      federal law enforcement agencies here today. Thanks to  
22      each of our panelists for sharing their expertise.

23                We will have four panels, each focusing on a  
24      particular aspect of the cramming problem. Our first  
25      panel will look at how cramming occurs and the nature and

1 scope of the injury it causes to consumers. The  
2 panelists will examine the ways in which unauthorized  
3 charges are placed on the telephone bill and the goods  
4 and services that are purportedly being billed and the  
5 injury caused.

6 Next, representatives of the telephone billing  
7 industry and law enforcement will examine the steps  
8 industry takes to detect, monitor, and prevent cramming.  
9 This discussion will focus on what the industry currently  
10 does to keep crammers from accessing the billing  
11 platform, to monitor billing data to detect ongoing  
12 criminal activity, and to expel crammers from the billing  
13 platform and to ensure they do not return. The panel  
14 will also take a hard look at whether these steps have  
15 been effective in identifying and preventing cramming.

16 Our third panel will examine the approaches to  
17 cramming prevention used on mobile and landline billing  
18 platforms. The panel will discuss whether the two  
19 platforms differ in procedures for screening third-party  
20 billers, monitoring cramming activity, and taking action  
21 against billers who submit unauthorized charges. Our  
22 panel will explore whether there are cramming prevention  
23 mechanisms and best practices that could translate from  
24 one platform to the other.

25 Finally, our last panel will brainstorm to find

1 potential solutions to enable industry, consumers, and  
2 law enforcers to better prevent, detect, and reduce  
3 telephone bill cramming. Panelists will discuss specific  
4 initiatives at the state level and related ideas, such as  
5 allowing consumers to request a block on all third-party  
6 billing, requiring third-parties to get written approval  
7 from consumers before placing charges on their phone  
8 bills, and improving disclosure of third-party charges to  
9 consumers.

10 I am looking forward to an informative  
11 examination of the cramming problem and a lively  
12 discussion of potential solutions from our panelists and  
13 from all of you in the audience. I encourage each of  
14 you, if you've not done so already, to submit written  
15 comments to be included in the record of this forum.  
16 Your ideas and expertise will be useful to the FTC, other  
17 law enforcers, industry, consumer protection  
18 organizations, and policymakers in developing sound,  
19 informed measures to prevent telephone bill cramming.

20 Indeed, Congress itself is watching this forum.  
21 We got a letter last night from the Chair of the Senate  
22 Commerce Committee, Senator Rockefeller. I want to just  
23 read you the first paragraph in a six-page, single-spaced  
24 letter. Senator Rockefeller writes, "I applaud the  
25 Federal Trade Commission's decision to hold a forum on

1 unauthorized, third-party charges on telephone bills. As  
2 you know, the practice of placing unauthorized, third-  
3 party charges on telephone bills, commonly referred to as  
4 cramming, is a problem dating back to the 1990s. For far  
5 too long cramming has cost consumers and businesses both  
6 time and money as they have faced a seemingly endless  
7 string of bogus third-party charges on their landline  
8 telephone bills. It is time we put an end to this  
9 harmful practice."

10 Senator Rockefeller goes on to commit -- to  
11 seek to solve this problem through policy and legislative  
12 means, and he and his staff are closely watching this  
13 proceeding. So, you're speaking to an audience, I think,  
14 broader just than the Federal Trade Commission and our  
15 law enforcement colleagues.

16 But we at the Federal Trade Commission are  
17 determined and committed to reducing cramming and the  
18 injury it causes businesses and consumers. Thank you  
19 once again to our panelists and our audience. A special  
20 thanks to our law enforcement partners, including the  
21 Federal Communications Commission and the Department of  
22 Justice, for participating in this workshop. And special  
23 thanks to Lois Greisman and her terrific colleagues in  
24 the Division of Marketing Practices, many of whom you  
25 will see today, for putting this workshop together.

1 Thanks so much.

2 (Applause).

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1                   **SESSION 1: CRAMMING -- HOW DOES IT HAPPEN AND**  
2                                   **WHAT IS THE INJURY?**

3                   **(Telephone ringing).**

4                   MR. DEITCH: I thought that was a good way to  
5 get a cramming conference started and get your attention.

6                   **(Laughter).**

7                   MR. DEITCH: Good morning, everybody.

8                   AUDIENCE: Good morning.

9                   MR. DEITCH: Good. Let's try that again. Good  
10 morning, everybody.

11                  AUDIENCE: Good morning.

12                  MR. DEITCH: This is a self-involved conference  
13 where people have a chance to ask questions, give their  
14 input. I'm going to start out with this panel. My name  
15 is Russell Deitch. I'm an attorney with the Federal  
16 Trade Commission. I'll be your moderator for Panel 1.

17                  Before I do the introductions, I thought it  
18 would be a good idea to give a little background or an  
19 overview on the telephone billing system. The name and  
20 the topic is going to come up a number of times during  
21 the presentation. So, they say a picture is worth a  
22 thousand words, so that I saved myself some time speaking  
23 and you some time listening, let's move on to the next  
24 slide.

25                  There are generally four parties involved in

1 the landline telephone billing system. The first is a  
2 merchant or a vendor; the second is a billing aggregator;  
3 the third is called the local exchange carrier, or LEC,  
4 which means basically a phone company; and the fourth is  
5 a consumer. The consumer can be an individual; it could  
6 be a small business; it could be any business.

7 What happens is a vendor submits a charge to  
8 the billing aggregator. The billing aggregator submits  
9 the charge to the LEC or phone company, and then the  
10 charge is placed on a consumer's bill and sent to the  
11 consumer. The flow of money goes in the opposite  
12 direction. The consumer pays funds to the LEC or  
13 telephone company; funds go to the billing aggregator;  
14 and then funds go to the vendor.

15 And I should also do the famous disclaimer that  
16 David Vladeck does in his talk. These are my views.  
17 They don't necessarily represent the views of the  
18 Commission or any commissioner. But at least this gives  
19 you a pictorial background for the telephone billing  
20 system to keep in mind during the first panel.

21 We're also going to be talking a lot about  
22 cramming. You're going to hear the word "cramming" over  
23 and over again. So, I thought it would be helpful to  
24 give a working description before we get into the panel.  
25 Again, this is for panel one, this description. And it's

1 one way of looking at cramming is causing unauthorized  
2 charges for a variety of goods or services to appear on  
3 consumers' telephone bills. So, now when you hear the  
4 word at least you'll have some general idea of what it's  
5 meaning, and our panelists will put it more into context  
6 during their talk.

7 Now, with those background preliminaries out of  
8 the way, I'm honored to introduce our distinguished  
9 panel. Our first panelist is Beth Blackston. She's with  
10 the Illinois Attorney General's Office. She's been  
11 Assistant Attorney General since 1997. She's worked on a  
12 variety of consumer protection issues and cases,  
13 including litigating cases against companies allegedly  
14 engaged in landline telephone bill cramming. She  
15 received her law degree from Washington University in St.  
16 Louis.

17 Our second speaker is Diane Dusman. She's a  
18 senior assistant for the Pennsylvania Office of Consumer  
19 Advocate. She has been a member of the Consumer  
20 Protection Committee of NASUCA, which stands for the  
21 National Association of State Utility Consumer Advocates.  
22 And she's been there since 2003. She's also facilitated  
23 a sub-committee of state telephone advocates from 2005 to  
24 2010. She received her JD degree from American  
25 University here in Washington, DC.

1                   Our third speaker -- our third speaker is Craig  
2                   Graziano, who is attending by phone. Craig, can you hear  
3                   us?

4                   MR. GRAZIANO: I can.

5                   MR. DEITCH: Great. In 1999, he joined the  
6                   Office of Consumer Advocate, a Division of the Iowa  
7                   Department of Justice, and since 2008, he has chaired the  
8                   Consumer Protection Committee of NASUCA. He received his  
9                   law degree from Drake University in Iowa.

10                  And the final speaker is Larissa Bungo. She  
11                  will be filling in for Jennifer Williams who cannot make  
12                  it today. Larissa is an assistant regional director in  
13                  our Eastern District Office for the Federal Trade  
14                  Commission, Eastern Regional Office. She was a lead  
15                  attorney in FTC v. Mercury Marketing, and she criminally  
16                  prosecuted some of the officers of that company as a  
17                  special Assistant U.S. Attorney. She received her law  
18                  degree from Case Western Reserve Law School.

19                  And now with those preliminaries underway, I  
20                  turn it over to Beth Blackston.

21                  MS. BLACKSTON: Can you all hear me? Good  
22                  morning. Thank you for giving me the opportunity to  
23                  speak today. As Russ mentioned, my name is Beth  
24                  Blackston. I'm an Assistant Attorney General in the  
25                  Consumer Fraud Bureau at the Office of the Illinois

1 Attorney General. Over the years, the Office of the  
2 Illinois Attorney General has filed 30 civil law  
3 enforcement actions against alleged phone bill crammers.  
4 And the FTC and the states have brought numerous cases  
5 over the years against both vendors and aggregators.

6 In our office, we use our Consumer Fraud and  
7 Deceptive Business Practices Act, which is basically a  
8 mini-FTC act. What we allege, among other things, is  
9 that these companies are engaged in the deceptive  
10 practice of placing unauthorized charges on consumers'  
11 telephone bills. And typically we resolve these cases  
12 with a judgment using the law enforcement tools available  
13 to us, which are typically an injunction, civil  
14 penalties, and restitution to aggrieved consumers.

15 Also, we attempt to resolve individual consumer  
16 complaints through our informal mediation process. And  
17 for cramming complaints, that means sending a copy of the  
18 complaint to both the vendor and the aggregator, to the  
19 extent that we can identify the vendor, we send it.

20 So, and we're still receiving cramming  
21 complaints. We started receiving them probably in 1996,  
22 '97, and they really took off, and then they kind of  
23 quieted down for a couple of years, but in recent years,  
24 we've seen the trend upward again. And we continue to  
25 see phone bill cramming complaints.

1                   So, one of the questions that this panel is to  
2 answer is how does it happen. So, I thought I'd go -- we  
3 have the same question, whenever we receive cramming  
4 complaints, and whenever we open an investigation of a  
5 particular vendor, what we do is we send a pre-suit  
6 subpoena to the aggregator and request marketing  
7 information, among other things, from the aggregator for  
8 the vendor for which it's billing.

9                   And common methods of solicitation include  
10 telemarketing. We still see some telemarketing today.  
11 It's less prevalent now because of the do-not-call  
12 registry, but as Russ mentioned, both business consumers  
13 and residential consumers are affected by phone bill  
14 cramming. So, we do still see some telemarketing to  
15 small business.

16                   And our experience has been that one of two  
17 scenarios applies. Often, we see a -- what we construe  
18 to be a deceptive and untaped sales pitch, followed by  
19 the taped verification conversation. And another  
20 scenario we've seen is some cases we don't even believe  
21 that the verification or the telemarketing actually took  
22 place. And the reason we think this is because whenever  
23 we request information from the company when someone has  
24 complained to us, a lot of times we'll be provided with  
25 the name of -- in the case of a small business, we'll be

1 provided with the name of someone who never worked for  
2 the company, or in the case of residential customers,  
3 sometimes the customer will listen -- the consumer will  
4 listen to the recording and say, that's not my voice, and  
5 we can tell from talking to them on the phone that it  
6 isn't their voice.

7 And to give you a sense of what -- maybe an  
8 example of a possibly deceptive telemarketing script, I'm  
9 going to paraphrase for you an actual script that we  
10 received from a billing aggregator that one of its  
11 vendors was using. And this is someone that we sued.  
12 And it's a paraphrase; it's not an exact quote. But it  
13 will give you a sense for what might be happening during  
14 some of these telemarketing calls.

15 And this involves an online yellow pages vendor  
16 that calls small businesses and tries to sign them up for  
17 an online yellow pages listing. "Hi, this is so-and-so  
18 with the yellow pages. Can I please speak to the person  
19 who handles your online yellow page listing? You  
20 currently have a business listing with us, and I would  
21 like to verify that our information is correct.

22 Are you still called such-and-such business at  
23 such-and-such address with this phone number? And just  
24 to confirm, your name is so-and-so and you're the  
25 receptionist, okay, great, because you already have a

1 listing with us, there is no charge, we just want you to  
2 try the premium listing for three -- 30 days for free so  
3 that potential customers can find you first.

4 We'll go ahead and send you some written  
5 information about this so that you and your management  
6 can decide whether you want to continue. If you decide  
7 to continue, it's only \$39.95 a month. Call us at our  
8 toll-free number if you don't want it, but you can keep  
9 it for the entire year. Now I just need to transfer you  
10 to the verification system. Just answer the questions  
11 with a yes or no. Any questions before we go to  
12 verification? Great, thank you, please hold."

13 So, that's kind of how we think it's happening,  
14 and the people that we've spoken to who remember actually  
15 being involved in a conversation like this, they've told  
16 us that they believe that they were agreeing to receive  
17 written information or to accept a free trial and that in  
18 order to continue they would have to take some kind of  
19 affirmative action. They did not understand that they  
20 were making a purchasing decision by accepting the offer.

21 Another marketing method that we've seen, this  
22 is kind of from several years ago, and I don't really  
23 think it's happening anymore, but it's worth mentioning.  
24 We had a cluster of cases that we did where consumers  
25 would have these charges show up on their bills and they

1 had no idea what it was for. And we would contact the  
2 company and the company would claim that the consumers  
3 called a 1-800 number and requested the service. And the  
4 consumers that we talked to didn't recall having done  
5 this and denied all knowledge of it.

6 Another marketing method that we saw early on  
7 in the process was written letters of agency, or LOAs.  
8 It's basically a slip of paper with the consumer's name,  
9 address, and phone number on it, and it purports to  
10 authorize the vendor to charge the phone subscriber for a  
11 product or service and to bill the subscriber on his  
12 phone bill. And sometimes vendors would produce a slip  
13 of paper that they claimed the consumer completed in  
14 order to sign up for the service, and sometimes consumers  
15 will take a look at it and say, well, that's not my  
16 signature, here's my signature, it looks nothing like my  
17 signature, I'm very upset, please prosecute this as a  
18 forgery.

19 And what we think was happening is that the  
20 vendors were just paying lead generators on commission,  
21 which creates some not good incentives possibly to  
22 manufacture some LOAs.

23 We also have seen, and this is now illegal in  
24 Illinois and I believe in other states, sometimes the  
25 written LOA would be a sweepstakes entry form. You can't

1 do that anymore, but people would think they were  
2 entering a sweepstakes and fill out the form and provide  
3 their phone number, not realizing that it also was  
4 authorizing some kind of telephone billing. And even  
5 consumers who have knowingly filled out the sweepstakes  
6 entry forms, they don't understand that they've made a  
7 purchasing decision by doing that.

8 Another marketing method that we've seen, also  
9 infrequent, is live check solicitations. We saw this for  
10 I think it was an online yellow pages case where small  
11 businesses received actual checks that really were  
12 solicitations, but they just processed them as checks the  
13 way they would process any other check that comes into  
14 their business. But if you looked really closely on the  
15 endorsement line there would be some kind of a fine print  
16 that says that by endorsing this check you are  
17 authorizing such-and-such company to bill you and to be  
18 billed on your phone bill for these services. And a lot  
19 of companies did not see that and complained about that.

20 Now, what seems to be the common method now of  
21 marketing is online marketing. And I guess that's kind  
22 of the equivalent of a letter of agency. Theoretically,  
23 you can sign up for a telephone-billed product or service  
24 at a vendor's website. And, in fact, when we subpoena a  
25 billing aggregator and ask for what kind of marketing

1 materials their clients are using they'll often give us  
2 the home page of the vendor. And you can sign up for the  
3 service on the home page, and there's a place to enter  
4 your information. But we don't think that's what  
5 consumers are doing.

6           Instead, we believe that they or even someone  
7 in their family are doing, falling victim to co-  
8 registration, which was described very well in the Inc21  
9 order, where you are online and you see a popup box for  
10 like free recipes or free coupons or claim your TV that  
11 you've won. And you provide that information in the box  
12 because you think you're getting the other thing and  
13 somewhere there might be some fine print that says that  
14 you're agreeing to be billed for various services on your  
15 phone bill.

16           But the consumers who've complained to our  
17 office don't understand that they've done this and they  
18 don't believe that they did. So, overall, the consumers  
19 that we've talked to over the years do not understand  
20 they're making a purchasing decision or that their phone  
21 number operates as an account number.

22           Another question, what kind of goods and  
23 services are billed? We just kind of went through and  
24 pulled out different kinds of things we've seen in  
25 consumer complaints over the years: voicemail service,

1 internet service, website design, search engine  
2 optimization, regular horoscope, voicemail messages, a  
3 cell phone warranty, which shows up on your phone bill as  
4 internet service, but it's actually supposed to be a cell  
5 phone warranty, prepaid calling cards, and online yellow  
6 pages listings.

7 Then we have what I like to call mystery  
8 services that show up on people's phone bills and it's a  
9 little unclear what the service is. We've seen things  
10 like voice online, dial forward, dial flex, plan plus,  
11 network one, call advantage, custom call, value plan.  
12 And we don't know what those are, and neither do the  
13 consumers who were billed for them.

14 I wanted to mention usage data briefly.  
15 Sometimes we request usage data for the products that  
16 consumers are billed for, and the vendors often tell us  
17 that they don't track usage. In one case, we requested  
18 and were able to obtain usage data. Out of over 3,000  
19 Illinois consumers billed for a so called product, zero  
20 -- well, I have to say what it was -- a cell phone  
21 warranty, zero consumers made a warranty claim out of  
22 3,000.

23 No consumers that ever complained to us ever  
24 say that they've used the product for which they were  
25 billed. And, again, like I mention, they sometimes think

1 they're agreeing to a free trial or agreeing to receive  
2 written information about the product and that they have  
3 to take some action in order to be billed.

4           What injuries result? Obviously, people pay  
5 unauthorized charges some time before they notice them on  
6 the bill, and then they have to spend time trying to  
7 obtain a refund or a bill credit. And sometimes that can  
8 be difficult. When consumers work through our office,  
9 we're having a little more success getting bill credits  
10 for individual consumer complaints.

11           And really quickly, because I'm told I'm  
12 running out of time, I wanted to give some sample dollar  
13 amounts that we obtained when we subpoenaed billing  
14 aggregators in the course of different vendor  
15 investigations that we've done. The dollar amount, just  
16 for Illinois consumers, typically ranges from five to  
17 seven figures, usually thousands of billings to Illinois  
18 consumers for each vendor. Here are some -- oh, and  
19 also, we asked for refunds during that same time frame,  
20 and they tend to run anywhere from 25 to 60 percent of  
21 the amounts that were billed in that period, which is a  
22 high, high refund rate.

23           So, some examples. One case, we had 2,527  
24 consumers that were billed nearly \$36,000. In one case,  
25 we had over 23,000 billings for a total of over \$466,000.

1 One case we had 25,000 billings in an eight-month period  
2 at between \$35 and \$44.95 per billing for a total of  
3 anywhere from \$875,000 to over \$1.1 million.

4 One vendor in 15 months billed 3,650 Illinois  
5 consumers approximately \$800,000. And this is one of my  
6 favorites, in one case over -- nearly 10,000 -- it was  
7 9,842 Illinois consumers were billed for credit repair  
8 services. And when we drilled down a little bit on the  
9 phone numbers that were billed, we found -- this is for  
10 credit repair services -- Steak 'n Shake, our county  
11 coroner's office, a Super 8 lodge, and our local public  
12 library's story line, which is just a recording.

13 So, bottom line, my personal opinion is that,  
14 you know, the carriers and the aggregators tried a fix  
15 several years ago with the best practices, and those best  
16 practices, coupled with numerous law enforcement actions,  
17 did seem to reduce the problem for a few years, but now,  
18 as I mention, we've seen a resurgence in phone-billed  
19 products and consumer complaints alleging cramming. And  
20 we just don't see any real products or services that  
21 anyone is using.

22 It seems that everybody on the billing side  
23 could do a better job of knowing their customers and how  
24 they are marketing based on some of the responses that we  
25 get. And, honestly, this is just my personal opinion, I

1 don't see the problem going away without a legislative  
2 fix, and a legislative fix that goes beyond requiring  
3 authorization and verification, because that's already  
4 required now, and we're still seeing problems. Thank  
5 you.

6 Bear with us. We're having technical  
7 difficulties.

8 MS. DUSMAN: In the meantime, my name is Diane  
9 Dusman. I'm a Senior Assistant Consumer Advocate with  
10 the Pennsylvania Office of Consumer Advocate. It's very  
11 nice to be here this morning. Oh, you can't hear.  
12 Sorry.

13 My name is Diane Dusman. I'm a Senior  
14 Assistant Consumer Advocate with the Pennsylvania Office  
15 of Consumer Advocate. We are the statutory advocate for  
16 utility consumers in Pennsylvania. And I'll repeat the  
17 caveat I heard earlier. The views that I express this  
18 morning are my own, not necessarily those of the Consumer  
19 Advocate, although we're a small office, we work pretty  
20 closely together.

21 This title just plays off of the -- that much  
22 of the cramming that we see appears to have to do with  
23 internet use of some sort or visiting a site, and I'll  
24 show an example of one extreme case that we investigated  
25 a few years ago. As we've heard already, sometimes when

1 a consumer complains about cramming it's virtually  
2 impossible to find what the root cause of that charge is,  
3 and as we've seen with the Inc21 case, apparently  
4 sometimes consumers do nothing at all to lead to the  
5 charge, it's a fairly random thing.

6 This was a bill that got our attention and it,  
7 as you can see, the call pattern is not at all the kind  
8 of call pattern that normal consumers would engage in.  
9 We've got calls to the same number over and over again  
10 for nearly an hour, and then a redial within seconds  
11 afterward. Now, first with this kind of bill (inaudible)  
12 focus around economic injury, although for (inaudible)  
13 affect a lot of consumers in the households, but mostly  
14 (inaudible) this type of -- would be just the recidivist  
15 kind of bill that led to a lot of familial turmoil and  
16 really a lot of upset in households.

17 Cramming is on the increase in Pennsylvania,  
18 judging by first quarter reports, although of course we  
19 see that whenever cramming shows up in the news a lot, we  
20 tend to get more complaints, obviously because people see  
21 that others have been ripped off and they start looking  
22 at their own phone bill. There is an increased vigilance  
23 when it gets into numbers, which is why we're grateful  
24 for this kind of opportunity to bring it onto the public  
25 light. And we have also cooperated with Senator

1           Rockefeller and his investigation.

2                     Another example that you'll see -- we found  
3           destinations on these bills that we really didn't even  
4           know existed. It was quite a lesson in geography. But  
5           you can see \$2,172 is going to get your attention on a  
6           phone bill.

7                     Now, when faced with the complaint about this  
8           bill, what we learned was that the carrier's response  
9           was, any calls made from your phone you're responsible to  
10          pay them. And they basically told people that they had  
11          to pay these bills, no matter how high. Sometimes they'd  
12          offer an adjustment of some sort. We didn't find that  
13          satisfactory.

14                    It was pretty clear on investigation of the  
15          legal bases for these and of course our research led us  
16          to the Verity case, which was an FTC case some years ago,  
17          showing that this type of calling pattern resulted from  
18          something called Trojan dialers, which was a program that  
19          when automatically downloaded onto a customer's computer  
20          would generate these kinds of charges. We weren't even  
21          sure when we really drilled into it and talked to the  
22          aggregators that were involved in this, you know, whether  
23          the calls were even made to the destinations that  
24          appeared.

25                    So, it was clear to us that crimes were being

1 committed. In Pennsylvania, we have several laws that we  
2 can draw on, but our primary one is our specific  
3 regulation that prohibits cramming on the phone bill that  
4 was enacted by our Public Utility Commission. But, of  
5 course, we also have the Unfair Trade Practices, our  
6 little FTC act, to draw on, and the case of the  
7 unauthorized international charges, we also asserted that  
8 it was a form of identity theft because use of personal  
9 identifying information in Pennsylvania for illegal  
10 purposes is a form of identity theft.

11 And with all those items of ammunition we  
12 convinced the carriers that, in fact, they shouldn't be  
13 pushing other people to pay the charges, they should be  
14 lenient and we wound up -- oh, I did put this example in,  
15 which isn't in my papers, so forgive me for this, this  
16 was a rare example when a customer service rep actually  
17 specifically said to a customer, "This is what you did to  
18 lead to these charges."

19 Now, when we went to the website that the  
20 customer service rep told us about, this was one of the  
21 first things we saw, an entire screen full of  
22 disclosures, and if this works the way it's supposed to,  
23 you see at first the word says "I accept." And this was  
24 some sort of pornographic website which of course we'd  
25 been meaning to check it out, it drove our IT people

1 crazy, but we said, hey, it's an investigation. So,  
2 here's the (inaudible) language, you accept that you will  
3 be charged and pay \$2.99 per minute along with a \$1.99  
4 charge for the actual long distance connection on your  
5 local phone bill by TELUS Billing. So, that was supposed  
6 to be the disclosure that led people to know they were  
7 going to be charged.

8 And in this particular case, they also got an  
9 entertainment charge, which was a separate bill. You  
10 will incur these charges, that's built in there, as well,  
11 and this is my favorite part: "These charges are  
12 accurate, no slamming or cramming for these charges has  
13 occurred."

14 **(Laughter).**

15 MS. DUSMAN: So, there. Well, this consumer  
16 was certain that he hadn't visited this website, although  
17 there was a suggestion that because of the time that  
18 (inaudible) calls were made there might have been an  
19 unsupervised person in the household, so we were never  
20 sure. However, that case and the case that involved the  
21 charges -- the kinds of charges that I initially showed  
22 you led us through our cramming reg to a stipulation with  
23 the carriers and with several aggregators that were  
24 involved.

25 Our specific cramming reg is very clear, and

1           it's comparable to what Craig Graziano uses in Iowa. One  
2           call to the carrier to say I did not authorize this  
3           charge on my bill should resolve the dispute on the bill.  
4           If the customer says I didn't authorize it, the carrier  
5           is duty-bound under this reg to say we'll take it off of  
6           your bill, you don't need to pay it, we will recourse it  
7           and we will send it back to the initiator of the charge.  
8           That doesn't guarantee that the initiator of the charge  
9           won't try to collect it otherwise, but we've seen very,  
10          very few cases. It's really rare. I can think of maybe  
11          two where somebody got an independent bill from the  
12          initiator of the charge. That happened later with a  
13          company called Buzz Telecom, which is no longer around.

14                        But among other things, our reg requires that,  
15          you know, the charge be removed and that the customer be  
16          advised that they still can file a complaint even with  
17          the removal of the charge.

18                        The first settlement that we arrived at with  
19          our carrier in Pennsylvania and the aggregators that flow  
20          the charges through led to over \$700,000 in refunds and  
21          credits, just to Pennsylvania customers who complained.  
22          That's not everyone who experienced the charges but  
23          everyone who complained about the charges.

24                        Our settlements are not limited to monetary  
25          relief. We also have consumer education components,

1 education of customer service reps about the problem,  
2 what they should be telling customers on how to avoid the  
3 problem, and reporting requirements on what the companies  
4 have done, you know, compliance effort, which is pretty  
5 typical.

6 So, we've talked about how it happens. We feel  
7 that there could be more vigilance on the part of the  
8 aggregators and the carriers in terms of where these  
9 charges are coming from. As we've seen through best  
10 comments and our experience, sometimes customers do  
11 nothing at all and they still experience these  
12 unauthorized charges on their bills.

13 So, in our view, in my personal view,  
14 prevention would be the best cure for this. And we think  
15 that there's a starting point with the anti-cramming and  
16 best practices guidelines that were adopted at the FCC  
17 when this first became a problem in the late '90s. A lot  
18 of what's in there in terms of screening, customers,  
19 meaning the customers who are sending the charges  
20 through, the contacting entities could be more effective,  
21 more disclosures could be made through enforcement  
22 agencies when this is happening.

23 And I am asking the question whether we can  
24 borrow from other industry practices on prevention of  
25 cramming. In other words, in my personal experience and

1 with some of the smaller companies in Pennsylvania, I've  
2 seen that they have systems in place where they -- and I  
3 call it aberrant charge kick-out, if they have a bill  
4 that goes through that shows a far higher level of usage  
5 then the customer has ever had before or a charge that is  
6 really anomalous compared to the customer's prior billing  
7 pattern, they'll kick it out and make a specific call to  
8 that customer saying, hey, we've noticed a change in your  
9 bill or a charge that's extraordinarily high, can you  
10 verify for us that you actually made this charge. And  
11 they put their customer service reps to work on that sort  
12 of issue. So, can we look to other industries for  
13 possible assistance in determining information?

14 You'll see where this is just a slide that  
15 shows, having caught up my research file for what's going  
16 on in Pennsylvania, these are just a selection of names  
17 of charges that have been disputed in Pennsylvania, just  
18 in late 2010, early 2011. And except for the aggregated  
19 names, the other names only have appeared maybe two or  
20 three times. It's a lot of different entities.

21 The charges, unlike the huge unauthorized long  
22 distance charges we saw earlier, are now, as we know,  
23 very small charges, a lot easier to overlook on a bill,  
24 and they appear up to six months. And people still have  
25 a problem, even with our reg in place and with all the

1           publicity about this, people still report that they get  
2           the statement from a customer service rep, it's on your  
3           bill and you have to pay it, or you have to go to the  
4           initiator of the charge. And as we've seen, the  
5           initiator of the charge is not necessarily reachable, for  
6           one, and not necessarily cooperative in resolving the  
7           dispute.

8                         So, in summation, we really think that there's  
9           room in a lot of different directions to attack the  
10          problem, prevention being the best cure for this, since  
11          a lot of times consumers are really innocent bystanders.  
12          Consumer education by offices like our own and other  
13          consumer groups. And of course that in tandem with  
14          additional enforcement and injunctions against  
15          initiators. We feel that there's plenty of the problem  
16          to go around state and federal level. And I really thank  
17          you for your kind attention.

18                        MR. DEITCH: Thank you. Our next panelist is  
19          Craig Graziano, who will be attending by phone, so  
20          pretend he's here and he also has his nameplate for you  
21          all to look at.

22                        Craig, take it away.

23                        MR. GRAZIANO: Thank you, Russ. I'm sorry I'm  
24          not able to be there in person. Can you hear me okay?

25                        MR. DEITCH: Yes.

1 MR. GRAZIANO: Okay, if there's any problems  
2 with audibility, please -- please interrupt me.

3 I first want to thank the Commission for  
4 convening this forum, for inviting our participation, and  
5 for its body of work over the years in combating the  
6 problem. Decisions like Inc21 and Verity before it are  
7 an enormous help to those of us in the states who are  
8 fighting the same battles.

9 Again, I'm with the Office of Consumer  
10 Advocate, Iowa Department of Justice. Our offices have a  
11 steady enforcement effort in place on cramming and  
12 slamming for nine years. We submitted some written  
13 comments. What I thought I would do this morning is  
14 scratch the surface, because that's all I have time to  
15 do, regarding the types of complaints we have seen and  
16 then say a bit about our enforcement effort.

17 Our statute authorizes the State Utility Board  
18 to assess a civil monetary penalty up to \$10,000 for a  
19 violation. The statute itself doesn't use the term  
20 "cramming." It used the term "unauthorized change in  
21 service." And on the definitions, I'm only going back to  
22 a comment our consultant made during our rule-making  
23 proceeding years ago. She said, "The key point is to put  
24 in place a -- is to put in place a set of rules that will  
25 cause a fraudulent, unfair, and deceptive practice. We

1 can call it slamming and cramming and whatever we want,  
2 but when you (inaudible) class it (inaudible) fraud,  
3 trying to get people to pay for something they haven't,  
4 in fact, bought. Our statute excludes wireless services.  
5 As a result, virtually all of our experience has involved  
6 wire-run service. Wireless complaints in Iowa are  
7 addressed by another division of the State Attorney  
8 General's Office using the Consumer Fraud Act.

9 Over the years, our office has seen complaints  
10 involving allegedly unauthorized services for long  
11 distance services, collect calls, directory assistance,  
12 calling card services, repair services, voicemail  
13 services, web hosting services, and online yellow page  
14 services, among other things.

15 We've even seen complaints involving allegedly  
16 unauthorized services -- allegedly unauthorized charges  
17 for a diet plan and social networking services. Some of  
18 the complaints are hard to forget. In one case, a  
19 collect call was supposedly accepted on a fax at a school  
20 at 4:00 a.m. on Sunday. In another, a call from a sex  
21 hotline was supposedly received at the home of a 65-year-  
22 old grandmother who lives alone. We were given a voice  
23 recording allegedly showing that the call was accepted by  
24 a male identifying himself as Marcus Welby.

25 Several years ago, we saw many modem hijacking

1 claims in which hackers would place calls from a  
2 consumer's computer, often to pornographic websites at  
3 remote locations on the globe, then succeed in having the  
4 considerable charges show up on the local phone bill.

5 In 2006, we saw hundreds of complaints against  
6 a company known as Buzz Telecom. These complaints  
7 alleged misrepresentations in the marketing of a long  
8 distance service, especially to seniors, and billing was  
9 (inaudible) provided.

10 (Inaudible) following enforcement activities,  
11 not just ours. In recent years, for example, we haven't  
12 seen many complaints involving collect calls. What we  
13 have seen in recent years are repeated complaints  
14 involving the two marketing strategies described by the  
15 Inc21 court: third-party verification and internet  
16 conduct. With respect to third-party verification, we've  
17 seen many complaints over many years in which consumers  
18 tell us that the billing companies or someone acting on  
19 its behalf, probably the telemarketer, has doctored the  
20 recording or pieced them together to make it appear an  
21 authorization was given when, in fact, an authorization  
22 was not given.

23 It is difficult for consumers to remember the  
24 details of a telephone conversation that occurred months  
25 ago (inaudible) remember enough to make a credible

1 complaint. We've seen numerous complaints alleging other  
2 types of deficiencies in the third-party verification  
3 process. Sometimes the person whose name is given on the  
4 recording as having authorized the charges turns out  
5 never to have worked for the small business being billed.

6 Of course we're ever seeing complaints in which  
7 misrepresentations have allegedly been made during the  
8 unrecorded solicitation portion of the telemarketing  
9 call, often beginning with an alleged misrepresentation  
10 that the telemarketer is calling on behalf of the  
11 consumer's local phone company -- local phone company.  
12 The alleged misrepresentations continue from there. For  
13 example, you've overpaid and you need to verify some  
14 information in order to receive a credit.

15 We heard many recordings, often involving free  
16 trial offers, in which the key words supposedly  
17 constituting an authorization for the bills are spoken  
18 too fast to be understood or are otherwise inaudible.

19 The other category of complaint I wanted to  
20 highlight involves allegedly bogus internet signers,  
21 again for services billed to the local phone bill. I  
22 wanted to start on that one with a flashback to 1998 and  
23 1999 when the U.S. Government Accountability Office, then  
24 known as the General Accounting Office, issued a couple  
25 of reports on cramming and slamming. These reports

1       expressed dismay that unscrupulous providers can use  
2       deceptive marketing practices, including deceptive  
3       contests and surveys, to lure consumers into providing  
4       authorization.

5                 Legitimate authorizations, the reports go on to  
6       say, can easily be diverted, changed, or forged. Records  
7       can be falsified to make it appear an authorization has  
8       been given -- has been given. Stepping back to 2011, it  
9       doesn't take a lot of imagination to figure out that a  
10      ubiquitously interactive worldwide web poses new  
11      opportunities for fraud and miscarriage.

12                The internet side of complaints that we see  
13      tend to display an almost higher sort of (inaudible) in  
14      essential detail. The billing company produces a list of  
15      identifying information concerning the consumer, such as  
16      name, address, phone number, e-mail address, and mother's  
17      maiden name or birth date. The company claims it  
18      received the information as part of a valid internet  
19      order. The consumer denies having placed an order, often  
20      also denying having any use for the product or service  
21      supposedly bought. Frequently portions of the listed  
22      information such as the birth date are incorrect.

23                There is rarely evidence explaining what  
24      happened. Occasionally, there are telling clues. In one  
25      case, it appeared the phone number the company claimed

1 that the consumers replied as part of the alleged order  
2 had not been the consumers' phone number for 17 months.

3 From a preventive standpoint, it appears that  
4 allegedly offending companies have commonly failed to  
5 institute any reasonable processes or procedures or  
6 security checks to verify or validate the genuineness of  
7 the alleged orders. One of my consumers expresses this  
8 (inaudible) that if I wanted to fill out the form and  
9 put, say, your phone number, I could easily do so. I  
10 could use your or any other number I wanted. Why are  
11 they not required to ensure the actual owner is giving an  
12 okay?

13 Another consumer echoes this same observation:  
14 I had to answer five questions to verify my identity in  
15 order to even ask about my phone bill, but someone else  
16 can sign me up and bill me for a service I've never heard  
17 of without any verification at all?

18 In terms of solutions, and I'm talking now  
19 about all of these claims, our office looks to the civil  
20 monetary penalty. Over the past nine years, we have  
21 filed hundreds of petitions against scores of companies  
22 seeking civil penalty for alleged cramming and slamming  
23 violations. The vast majority of these cases have been  
24 on terms including the civil monetary penalty. Our  
25 filings have represented only a fraction of (inaudible).

1                   With respect to our efforts to secure the  
2 penalties, companies often tell us we issued a credit,  
3 this is not a lot of money, you should let it go. We're  
4 not often persuaded. What is not a lot of money in any  
5 one case may be quite a lot of money in the aggregate.  
6 In 2005, for example, I think 11 Iowans, each disputing  
7 \$5 and \$8 for a single domestic collect call lodged  
8 complaints against two billing companies.

9                   A Commission press release later revealed a  
10 massive fraudulent billing scheme that collected more  
11 than \$30 million in bogus charges from (inaudible).  
12 Along similar lines, an Inc21 court observed that only 5  
13 percent of the billed customers in that case were even  
14 aware that they had been billed.

15                   The problem is relying on credit as a solution  
16 to the cramming problem is that many companies will issue  
17 credits in cases in which consumers complain but pocket  
18 the money in cases in which consumers did not complain,  
19 because so many consumers do not complain, the offending  
20 practices remain profitable despite the credits, so there  
21 is no incentive to stop.

22                   The penalties by contrast take the profit out  
23 of the offending practice. They give the companies an  
24 incentive to stop. They have a (inaudible) not only with  
25 respect to the particular company but also with respect

1 to the industry as a whole.

2 Our statute does not require proof of intent to  
3 violate. That omission advances the statutory goal.  
4 Because direct proof of a company's state of mind is  
5 rarely available, requiring proof of intent to violate,  
6 would mean that intentional violations would easily  
7 indicate sanction and even when the violation is not  
8 intentional such conduct is often the result of negligent  
9 and independent behavior. Civil penalties are designed  
10 to remedy such sloppy business practices so that such  
11 behavior will be policed and cleaned up.

12 Our statute similarly does not require proof of  
13 a theory (inaudible) violation. When we see the troubles  
14 and complaints, we can proceed without needing to wait  
15 and see whether additional complaints reveal a series or  
16 pattern -- a series or pattern of potential violation.  
17 Such (inaudible) the way it enforces worse. When  
18 enforcement is left to wait, most of the time there is no  
19 enforcement at all.

20 Artful operators are free to use multiple  
21 corporate entities in order to mask the scope of their  
22 operation. They are free to move from one corporate  
23 shell to another once complaints start to gain the  
24 attention of regulatory officials. There are also  
25 practical difficulties associated with pattern cases.

1                   As the Federal Communications Commission once  
2                   said with respect to planning, our experiences  
3                   demonstrate the vital -- the vital importance of  
4                   foreclosing potential sources of fraud before they become  
5                   a major subject of consumer complaints.

6                   And with both of our efforts, we have a very  
7                   long train of petitions over a significant period of time  
8                   detailing the many problems that consumers have  
9                   (inaudible). The penalties that we've negotiated appear  
10                  to have existed in increasing (inaudible) of other  
11                  enforcement (inaudible) activity, including those  
12                  undertaken by the Commission.

13                  In conclusion, we think state and federal  
14                  officials should continue to work together to combat the  
15                  problem. At the state level, pursuant to consumer  
16                  complaints, the (inaudible) uses and help to prevent  
17                  (inaudible).

18                  Companies that benefit from contractual  
19                  relationships should be held accountable, for they have  
20                  an ability to prevent the abuses but fail to do so.  
21                  Third-party verification processes, internet sign-on  
22                  processes, and third-party billing processes all merit  
23                  attention (inaudible).

24                  Thank you again for the opportunity to share  
25                  these observations.

1 MR. DEITCH: Thank you, Craig.

2 MS. BUNGO: Good morning, everybody. I'm  
3 Larissa Bungo. I'm the Assistant Regional Director for  
4 the East Central Region, which is located in Cleveland,  
5 Ohio. The East Central Region covers an eight-state  
6 territory which includes Ohio, Pennsylvania, Michigan,  
7 West Virginia, Virginia, Delaware, Maryland, and the  
8 District of Columbia.

9 Prior to becoming the Assistant Regional  
10 Director, for 15 years I was a staff attorney who was  
11 responsible for investigating and litigating consumer  
12 fraud -- civil consumer fraud matters. And I was the  
13 lead attorney in a matter called FTC versus Mercury  
14 Marketing, which also resulted in a criminal prosecution,  
15 and it was my privilege to serve with Jennifer Williams,  
16 the AUSA who would have been very pleased to tell this  
17 story to you directly, but unfortunately had a family  
18 emergency and could not be here. So, I will try to do  
19 this story justice and tell you the tale of United States  
20 versus Neal Saferstein.

21 Giving, again, a little bit of the background,  
22 the FTC's case began in the early 2000s, as we saw the  
23 emergence of cramming take place. We brought a case  
24 against Mercury Marketing and Neal Saferstein, alleging  
25 that the company was misrepresenting that consumers had

1 purchased services. And they stipulated to a consent  
2 agreement and agreed not to bill without authorization.  
3 Unfortunately, they continued their practices unabated.

4 The states brought several actions against  
5 Mercury, which now changed its name to GoInternet. Beth  
6 Blackston brought an action on behalf of the Illinois  
7 Office of the Attorney General against Mercury Marketing,  
8 as well as several other states. And we moved for  
9 contempt on this stipulated consent order. We did obtain  
10 a \$58 million contempt judgment, but I must say that this  
11 cramming operation did not end until the U.S. Attorney's  
12 Office took interest in it and a search warrant was  
13 completed.

14 So, on to Jennifer's presentation. Being the  
15 good prosecutor that she is, she would probably start  
16 with the product. And I'm going to do that. This is a  
17 picture of a law firm -- a web page for a law firm that  
18 you might recognize, Skadden & Arps. As we note, it is  
19 listed as Skadden & Arp here. And what GoInternet was  
20 doing is basically they had a massive scheme to defraud,  
21 which I will reduce to five components.

22 The product was an internet web page which was  
23 purportedly offered to help small businesses raise their  
24 internet presence. Remember, this is back in the early  
25 2000s. You'll note they did not just pick on small

1 businesses, because Skadden is an international law firm,  
2 certainly is not a small business.

3 Skadden, of course, had its own very legitimate  
4 web page at the time, which note some of its offices  
5 around the world. They had no use for the product that  
6 GoInternet had created for them. So, how does -- how  
7 does a charge for a product or service like this end up  
8 on a consumer's phone bill? I'll tell you that in the  
9 GoInternet case there were over 350,000 victims. The  
10 company was bringing in \$50 million a year, charging  
11 \$29.95 to consumers' phone bills, in this case, small  
12 business owners. It was quite lucrative, as you can see.

13 How they did it was they were very clever.  
14 First, things begin with a pitch. The pitch is seemingly  
15 innocuous. It's the telemarketer -- and by 2003,  
16 GoInternet had 1,000 telemarketers contacting consumers  
17 every day, and they would ask to speak to somebody who  
18 had authority to accept the mail.

19 And the pitch would go something like, "I just  
20 want to send you a package in the mail. I need to speak  
21 to somebody with authority. Are you the business owner?  
22 Are you the manager?" And usually the representative  
23 will say, "No, I'm not, but what is this about. If it's  
24 just to send a package in the mail, I can accept the  
25 package." "Oh, you do have authority to accept the

1 package, then, or the service. Right, okay, well, I just  
2 need you to verify some information, then."

3 And what would happen on the verification,  
4 then, is the representative would be asked if they agreed  
5 to accept the service. Now, having been tricked into  
6 believing that all they were doing was agreeing to accept  
7 the service of mail, these customers, these purported  
8 customers, were ill-prepared for the fact they eventually  
9 were going to be billed \$29.95 for this product that was  
10 going to come and be offered in the package.

11 So, again, something seemingly innocuous.  
12 Again, as my colleagues have said, usually not a  
13 memorable conversation. Most of the consumer victims  
14 that we talk to don't have a recollection of that  
15 introductory call and, in fact, I would argue, this is my  
16 personal view, that it is because the call is not  
17 intended to be memorable. And only the back end  
18 conversation is recorded, so there is no -- there's  
19 nothing to replay about how they got to the verification  
20 of their name and telephone number.

21 In the Saferstein and the GoInternet matter,  
22 there was a double layer of fraud in that Saferstein  
23 directed his vice president of customer service to also  
24 create fake verification tapes when necessary. So, after  
25 they had tricked the consumer into agreeing to accept the

1 products and services, when necessary he would also help  
2 to fabricate the evidence supporting the sale.

3 In terms of the package that I mentioned, they  
4 would say a package will be arriving. The package was a  
5 non-descript white envelope, eight-and-a-half-by-eleven,  
6 nothing on it to indicate that a purchase transaction had  
7 occurred. It was treated like junk mail because it  
8 looked junk mail. It usually ended up, unfortunately, in  
9 the trash bin without customers ever knowing that there  
10 was some obligation on their part to call the company and  
11 try to cancel. It was offered as a free trial. You have  
12 15 days to try out this internet ad that GoInternet  
13 wanted to create for the company.

14 And in the package would have been the proof  
15 web page, which GoInternet described itself as a proof.  
16 It was their idea that the customer would receive this,  
17 it's based on a template, and that they would have to  
18 call in and make it more unique or specific to the actual  
19 business. Now, the project, again, based on templates,  
20 is bare-bone and often mistake-ridden.

21 And another thing that I would point out is  
22 GoInternet used a sub-domain rather than a domain, so you  
23 can see -- it might be hard to note -- but at the top  
24 here, the web address is myinformation.com/skaddenandarp.  
25 All of the web pages were hosted behind the name

1 information or internetweb, which is the domain name that  
2 GoInternet used. And they did not register any of these  
3 web pages. So, unless the customer knew the exact web  
4 page address, they weren't going to find it when they  
5 searched for it on the internet.

6 So, there again is another layer by which this  
7 could pass under the radar. They weren't expecting a  
8 charge to appear on their phone bill, and they didn't  
9 know that a service had been created for them that would  
10 be available on the web.

11 The web pages, telemarketers, again, I  
12 mentioned, 1,000 telemarketers, they're making 1,500  
13 sales a day. They were creating 7,500 web pages a week  
14 for small businesses. Notably, there was only one web  
15 designer tasked with making changes to the web pages  
16 should a customer call in and say they wanted to change  
17 the service and make it more specific to that particular  
18 company. And I would argue that that was one of the  
19 strongest pieces of evidence that Saferstein knew that  
20 this business was engaged in fraud. In fact, he knew no  
21 one would be calling to make requests to change the web  
22 pages to make them more specific.

23 I'll show you another example of a mistake-  
24 ridden web page. You might recognize this company -- Al  
25 Jazeera. It appears Mr. Al-Jazeera sells televisions.

1 But most of you may recognize Al-Jazeera as an Arabic  
2 language broadcasting company. And Al-Jazeera paid for  
3 several years before recognizing that they were billed,  
4 as did law firms, as did churches. I can tell you about  
5 some web pages that I saw where the business hours for  
6 the churches were listed as Monday to Friday, 9:00 to  
7 5:00, accept Visa and MasterCard.

8 There were web pages for large companies like  
9 Northrop Grumman, except they were depicted as a law  
10 firm. Someone must have called and heard the word  
11 defense contractor and thought defense must be a law  
12 firm, created a web page just like the one for Skadden.  
13 So, you know, you would have Northrop Grumman, General  
14 Law Practice, defending your legal rights, would be the  
15 template for Northrop Grumman.

16 On the payment, so we've talked about the  
17 pitch, the package, and the product; on the payment,  
18 Saferstein was quite proud and would boast to other  
19 officers in the company that he believed the LEC billing  
20 process enabled -- enabled his company to perpetuate its  
21 fraud because consumers just routinely pay their phone  
22 bill and they aren't going to check it.

23 So, with that in mind, he represented that the  
24 product that -- that Mercury was selling or GoInternet  
25 was selling was internet services, because that was

1 permitted as a line item on the LEC bill. And they did  
2 offer dial-up service and e-mail, but their main business  
3 was this web presence through the web pages.

4 The phone bills for a small business owner, you  
5 can imagine, are quite lengthy. The \$29.95 charge did  
6 appear on a separate page, but because it was cast as  
7 internet services, what we would hear from the consumers  
8 is they would say, well, I thought it was my regular  
9 internet provider, I thought this was from my internet  
10 service that I would want. I had no idea that there was  
11 a web page created for my business and I would have no  
12 need for that, nor would I want it and certainly I didn't  
13 authorize it.

14 But months and years went by, and these  
15 businesses would pay these charges, not recognizing that  
16 they had been scammed and they had been crammed, in fact.  
17 Eventually, when somebody from the company would discover  
18 the charges, I'll get to my last P, which is what I'll  
19 call the panic. Panic ensues; the customer realizes,  
20 gosh, I've been paying for something, I don't know what  
21 it is, I don't know where this originates, and then you  
22 have this pattern of trying to trace back how did this  
23 \$29.95 charge originate.

24 And they would call the 800 number listed.  
25 GoInternet went through aggregators, so there was always

1 a third-party contact first. They would contact the  
2 aggregator, who would say you need to contact GoInternet  
3 directly. GoInternet would promise a credit or refund  
4 and then wouldn't issue it. So, there were attempts to  
5 thwart the credit or refund getting back into the  
6 consumers' pockets.

7 In total, our loss calculation for the criminal  
8 matter was over \$50 million, over 350,000 victims in the  
9 scheme. The criminal indictment for Neal Saferstein, the  
10 vice president, who was the president of the company,  
11 Tyrone Barr, who was the vice president of customer  
12 service who created the fake tapes, and Billy Light, who  
13 unfortunately committed perjury during the FTC's  
14 proceeding, was a 27-count indictment. All three  
15 officers did plead guilty to the charges. Saferstein was  
16 recently sentenced just last fall to 23 years for his  
17 crimes.

18 I think that the GoInternet matter is a good  
19 example of the great cooperation amongst the states and  
20 several law enforcement agencies, along with the U.S.  
21 Attorney's Office, the FTC, FBI, Postal Inspection  
22 Service, and IRS worked together to bring this matter to  
23 conclusion, but I must say it took 10 years from start to  
24 finish. That's a long time and a big investment to  
25 finally put an end to this particular bad actor's

1 conduct.

2 I'm trying to look through my notes to see if  
3 there's anything else Jennifer would want me to highlight  
4 to you. And I might ask if there are any questions that  
5 anyone has as I'm looking through about the scheme.

6 Sure.

7 UNIDENTIFIED SPEAKER: (Inaudible).

8 MS. BUNGO: If I were the consumer?

9 UNIDENTIFIED SPEAKER: No. If you could change  
10 any law, what would you do to stop this?

11 MS. BUNGO: Just speaking from my personal  
12 opinion, I think that the verification is an opportunity  
13 for fraud. Unfortunately where we don't record the front  
14 end of the call but we record the back end of the call  
15 and all it takes is a yes, yes, yes to certain questions  
16 that are posed and we know that there is dicing and  
17 splicing that can go on with that recorded portion, I  
18 would think that a better approach to letting -- if  
19 consumers truly want to use LEC billing as their choice  
20 method of payment is to get their written authorization  
21 to use it.

22 Thank you very much.

23 MR. DEITCH: We're going to open this up to  
24 questions in general. Thank you for your question. It's  
25 actually a chance to preview the fourth panel, where

1           there's going to be a discussion of potential solutions  
2           for people to discuss. Are there other questions for  
3           people? Yes, sir?

4                       MR. MCGLAMERY: I have no question, but I did  
5           have a comment. In the investigation of one of our  
6           cramming situations, when we asked them for  
7           verifications, we got some verifications. And we noticed  
8           something kind of strange, that the mother's maiden name  
9           was usually some city and that every one of those cities  
10          was lower case. And that -- in other words, this scammer  
11          had simply copied lists and populated the different  
12          (inaudible) with the -- what was from the list that was  
13          not very sharp and put the mother -- and put the cities  
14          in the mother's maiden name. And it was pretty apparent  
15          when all of them were exactly the same format that they  
16          had just downloaded a list.

17                      MR. DEITCH: Right.

18                      MR. MCGLAMERY: They didn't even bother  
19          telemarketing or anything else. And I thought it was  
20          kind of interesting. We also found in another case the  
21          surveyor, oh, would you please answer this survey real  
22          quick. And there was never anything in the survey  
23          indicating you were signing up for a service. You just  
24          (inaudible) name, address, these things, telephone number  
25          and that was the end of that. And the next thing you

1 know, you've got a bill.

2 MR. DEITCH: And could you, for the record,  
3 could you state your name and the organization you're  
4 with?

5 MR. MCGLAMERY: Yeah, my name is John  
6 McGlamery. I'm with the Nevada Attorney General's  
7 Office, and I'm speaking on the next panel, so . . .

8 MR. DEITCH: Another preview. Yes?

9 MR. BRODER: My name is Betsy Broder, and I'm  
10 from the FTC. So, my question is for our state  
11 enforcement partners. Have you seen the same entities,  
12 individuals, come up time and time again in your  
13 enforcement cases? That is, do you see a lot of  
14 recidivism? They'll just turn the names of the companies  
15 and (inaudible) doing what they're doing as Larissa  
16 described with Neal Saferstein's company.

17 MS. BLACKSTON: We don't know if that's  
18 happening or not truthfully in Illinois. I mean, we'll  
19 get -- it's always a different corporation with a  
20 different person who is the president or the secretary,  
21 but beyond that -- and it's usually an LLC and it's  
22 difficult to tell that -- whether there's overlap.

23 I will say for one of our first round of  
24 cramming cases we negotiated and settled several of them  
25 at the same time, and the checks were cut for the

1 separate cases from the same person. And we did not know  
2 that they were connected.

3 MR. DEITCH: One other question for the panel  
4 is what's a consumer to do when they find cramming  
5 charges on their phone bill? What do people think or  
6 some good advice or suggestions for that consumer.  
7 Diane?

8 MS. DUSMAN: In our cases, we required -- in  
9 our settlements, we required the company to alert the  
10 customer when they complained about an unauthorized  
11 charge to the possibility of putting a third-party charge  
12 block on their phone or an international call block on  
13 their phone. And we asked them to -- the stipulation  
14 required them to do that at no charge to the customer.  
15 There were some carriers that were charging to put blocks  
16 on, and we felt where people had been defrauded, that was  
17 not a fair -- a fair charge. So, that's one method of  
18 just trying to avoid it altogether.

19 MR. DEITCH: Anybody else have --

20 MR. GRAZIANO: This is Craig. In Iowa, the key  
21 thing we would recommend is simply to file a complaint  
22 with the Iowa Utility Board. The Utility Board is good  
23 about getting refunds for consumers when they deserve to  
24 have refunds. And that also gives our office an  
25 opportunity to evaluate what the consumer says and what

1 the company says and whether -- whether a civil penalty  
2 proceeding should be instituted.

3 MS. BUNGO: And this is Larissa. I would  
4 encourage the consumer to contact their phone company  
5 directly and let the phone company know that they believe  
6 they are a victim of cramming. And I think in most cases  
7 the carriers will try to remedy the situation.

8 Another thing I forgot to mention that I think  
9 is problematic in these cramming matters is the  
10 companies, when the LECs and the aggregators do something  
11 to suspend the billing practice, they often recreate  
12 their name as Betsy was suggesting. And in the  
13 Saferstein case, the company actually contracted with two  
14 other companies and moved its traffic to these two other  
15 companies so that it could continue to bill through the  
16 LECs and the third-party aggregators without their  
17 knowledge.

18 MR. DEITCH: Sir?

19 MR. MENJIVAR: Roberto Menjivar, FTC Chicago.  
20 As more consumers switch to mobile devices or wireless  
21 devices, are the states seeing an increase in complaints  
22 related to unauthorized charges to a consumer's wireless  
23 device and how are those complaints being handled? I  
24 think Iowa mentioned that they have a separate division  
25 that deals with wireless.

1 MS. BUNGO: Can you repeat the question for the  
2 record?

3 MR. MENJIVAR: This is Roberto Menjivar, FTC  
4 Chicago. My question is directed for the states. As  
5 more consumers switch to wireless devices and mobile  
6 devices, are your offices seeing an increase in  
7 complaints related to unauthorized charges to a  
8 consumer's wireless devices and how are those complaints  
9 being treated?

10 MS. DUSMAN: We have the same scenario in  
11 Pennsylvania as Craig does in Iowa in that our Attorney  
12 General's Bureau of Consumer Protection deals with any  
13 wireless complaints, so they don't really come to us, but  
14 I think that the same -- one of the same things that's  
15 available to wireless customers is to ask that such  
16 charges be blocked.

17 MR. DEITCH: Any other questions? Yes, sir?

18 MR. BREYVAULT: Hi, I'm John Breyvault with the  
19 National Consumers League here in Washington. A question  
20 for the panel but particular to Illinois AT&T filed  
21 comments prior to this (inaudible) for this workshop that  
22 laid out a pretty significant verification process that  
23 they used to try and work with aggregators and third-  
24 party billers, the third-party certifiers that use the  
25 aggregators.

1           In your experience in prosecuting these  
2           cramming cases, did you find that AT&T or other  
3           (inaudible) carriers with (inaudible) similar  
4           verification programs, that those were  
5           effective or what was your experience in how  
6           they used those systems without cramming?

7           MS. BLACKSTON: Well, I kind of talked in my  
8           comments about what we've seen from the aggregator end of  
9           things. And our experience has been that they -- they  
10          request and obtain certain information before agreeing to  
11          provide billing services for a customer.

12          But as I also mentioned, we found things that  
13          didn't match up like the actual product that was being  
14          billed for didn't match at all the text phrase that was  
15          showing up on consumers' phone bills. We would, whenever  
16          we filed a lawsuit, sometimes we would send a copy of the  
17          lawsuit to the aggregator and say, by the way, this is  
18          one of your customers. I don't know -- I don't have a  
19          sense for when in the process, if at all, it was picked  
20          up that a particular vendor was a problem vendor, so . .  
21          .

22          MR. DEITCH: And to better answer your  
23          question, we have panel two coming up next. Thank you  
24          for the transition. It will be what steps does a  
25          telephone billing industry take to detect, monitor, and

1 prevent cramming. So, with that, we can take a 15-minute  
2 break. Thank you.

3 (Applause).

4 MR. DEITCH: Thank you, panelists.

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2           **SESSION 2: WHAT STEPS DOES THE TELEPHONE BILLING**  
3           **INDUSTRY TAKE TO DETECT, MONITOR AND PREVENT CRAMMING?**

4           MS. BUNGO: We're back from the break. Can you  
5 hear me in the back? It's okay? All right, thanks.

6           We are resuming the forum with panel two. This  
7 panel will address what steps does the telephone billing  
8 industry take to detect, monitor, and prevent cramming.  
9 And for the record, I'm Larissa Bungo, and I will be the  
10 moderator for this panel. And I'm going to do a brief  
11 introduction of our distinguished members of the panel,  
12 and then I'm going to ask that Kent begins. And then Don  
13 Teague, who is patched in by telephone, will follow Kent.

14           So, starting first with the bios, I'm pleased  
15 to introduce you to Kent Wardin. He is an Assistant Vice  
16 President for AT&T. Kent is an Executive Director with  
17 over 26 years of experience in billing product  
18 management, billing compliance issues, and billing system  
19 requirements.

20           His past experience includes leading programs  
21 to implement third-party billing process. He also  
22 directed the conversion of AT&T to a single bill across  
23 all of AT&T to simplify the bill, to reduce pages, and to  
24 comply with the truth-in-billing requirements. His  
25 current responsibilities include product management

1 oversight and strategy for third-party billing, including  
2 the development and implementation of anti-cramming  
3 safeguards.

4 After Kent gives his presentation, we'll hear  
5 from Don Teague. Don is the CEO and Founder for MORE  
6 International, an eCommerce consulting firm for the  
7 digital content and eCommerce markets. Prior to founding  
8 MORE International, Don held the position of Executive  
9 Vice President of Marketing and Sales and was the  
10 cofounder for PaymentOne, a payment service provider.

11 Previously, he cofounded and held the position  
12 of Vice President of Sales and Marketing for UptimeOne,  
13 an eCommerce application service provider. Mr. Teague  
14 attended San Jose State University, studying business and  
15 human performance.

16 This is also a side note. Don was also a  
17 professional football player. He signed with the San  
18 Francisco 49ers of the NFL and the Glasgow Lions of the  
19 WFL. So, I'm pleased that he added that extra bit about  
20 him. We look forward to hearing Don's comments, as well.

21 We have three representatives from the law  
22 enforcement side, beginning with John McGlamery. John is  
23 a Senior Deputy Attorney General for the Bureau of  
24 Consumer Protection in the Consumer Advocate's Office in  
25 Nevada. His primary duties involve the prosecution of

1 deceptive trade violations, but he assists in utility-  
2 related actions on behalf of the Consumer Advocate.

3 John graduated from California State University  
4 Sacramento, with a degree in Government, Criminal  
5 Justice, and Business Administration before attending and  
6 graduating from the University of the Pacific McGeorge  
7 School of Law. After being admitted to the Nevada Bar,  
8 John also served as a criminal prosecutor for the Reno  
9 City Attorney, and he was Department Counsel for the  
10 Nevada Department of Industrial Relations, which  
11 regulates mine safety, enforces OSHA violations, and  
12 regulates industrial insurance providers. A wonderful  
13 career, it seems.

14 MR. MCGLAMERY: A little bit of everything.

15 MS. BUNGO: Next we also have Rich Goldberg  
16 with us. Rich Goldberg is an Assistant Director of the  
17 U.S. Department of Justice, Office of Consumer Protection  
18 Litigation. Rich, for the past 11 years, has prosecuted  
19 cases on behalf of each of OCPL's client agencies,  
20 including the FTC, Food and Drug Administration, Consumer  
21 Product Safety Commission, the National Highway  
22 Transportation Safety Administration.

23 Rich's cases have included criminal cramming  
24 matters prosecuted in the United States District Court  
25 for the Southern District of Florida. And in December

1           2006, Rich was awarded the FTC's Criminal Liaison Unit  
2           Award for cooperation with the FTC in the enforcement of  
3           criminal laws. Rich received his B.A. *cum laude* from  
4           Hobart College and J.D. with honors from the University  
5           of Maryland School of Law.

6                         And finally we have Laura Kim. Laura is the  
7           Assistant Director in the Division of Marketing Practices  
8           in the FTC's Bureau of Consumer Protection. Prior to  
9           becoming an Assistant Director, Laura served as an  
10          attorney advisor to the Chairman and Commissioner William  
11          Kovacic.

12                         Laura has spent several years as a staff  
13          attorney, also in the Division of Marketing Practices,  
14          where she focused on litigating consumer protection  
15          matters, including a case against a group of vendors and  
16          billing aggregators responsible for approximately \$35  
17          million in consumer injury.

18                         Before coming to the FTC, Laura was an  
19          associate at Covington & Burling. She graduated *summa*  
20          *cum laude* from Yale College and received her law degree  
21          from Harvard Law School.

22                         As you can see, we have a great panel here, and  
23          we look forward to hearing their comments and then  
24          opening up for comments from the audience. I will note  
25          that when we get to the comment and question-and-answer

1 portion, if you could hold your question until a mic  
2 comes to you and also identify yourselves so it can be,  
3 please, put on the record. But with that, I'll turn it  
4 over to Kent.

5 MR. WARDIN: Thank you, Larissa.

6 Thank you very much for having me attend today.  
7 I'm looking forward to our discussion this morning and  
8 hope it's interactive for us. I just wanted to express  
9 some of the programs that AT&T has put in place recently  
10 as a result of some similar -- can you hear me? Sorry.  
11 As a result of some of the similar things that law  
12 enforcement has seen over the last couple of years.  
13 We'll get started right away here.

14 Things that are in place right now are bill  
15 format, it has been in place since 1999. We've  
16 established a uniform platform across all 22 states.  
17 This has been in place since probably 2007, that we have  
18 identical bill format for all our customers. Third-party  
19 charges are clearly identified in a separate section of  
20 the bill.

21 On the very first page, we have a section of --  
22 a summary section of the service providers. This  
23 identifies to the consumer any time there's a brand new  
24 charge that's appearing. We put an asterisk next to the  
25 charge so they're easily identifiable to see anything

1           that's new on the bill.

2                         There's a separate bill page later in there for  
3 any of the charges that are non-AT&Ts. So, there's a  
4 page break for those so it's clearly identifiable with  
5 their 800 number, with the website for the consumer to go  
6 and contact and have any type of questions.

7                         Our policy, effective January 1st, 2010, was an  
8 address first policy for consumers. Any time a consumer  
9 calls in, that is it, period, adjust, remove it. It gets  
10 flagged as a cramming dispute. We do not -- we do not  
11 try to validate if it's a cram or not. We mark it as a  
12 dispute and we mark it against -- we tally those as part  
13 of our metrics that we measure our customers against,  
14 okay, third-party billers and the aggregators. Okay?

15                         Business that started approximately April 1st,  
16 2010, same policy. It's uniform across it. Anybody  
17 that's not following this, they're not following AT&T  
18 policy. Bill block, third-party bill blocking is offered  
19 as a result of that. Anybody calling in with a complaint  
20 automatically will be placed on a bill block for that  
21 service provider or for all third-party service  
22 providers. That's up to the customer's discretion to do  
23 that. And if any customer would call, and this is a free  
24 service, we will put it on any account for any customer  
25 that requests that. Okay? These are in place and

1 operational.

2 Service provider sub-kick application process  
3 are -- we have an application that is the form and the  
4 oversight is done by our third-party consolidators,  
5 aggregators. We get a copy of that. We also look at the  
6 application; we look at the names of the officers, see if  
7 we've had any past -- oh, thank you. Service providers  
8 clearinghouse required to complete application approval  
9 process prior to doing any of the billing. We do look at  
10 the websites, we do try the 800 numbers. This process,  
11 enhanced process, was also placed in the June 2010 time  
12 frame.

13 Cramming complaint data, we tabulate data of  
14 the cramming complaints from AGs, from our -- the FCC,  
15 also Better Business Bureau. Those are executive  
16 complaints. Our own internal adjustments that have been  
17 made, where the customer claims that they have never --  
18 they don't know what the service is. That also gets  
19 tabulated as a cramming complaint. And also from the  
20 clearinghouses, third-party aggregators also supply us  
21 with data. Okay, those are tabulated and given back and  
22 discussed with the clearinghouses on a monthly basis.

23 Limits on certain services, normal billing for  
24 no accounts for e-mail, voicemail, web hosting, internet  
25 directory, until we need to get our program set up, these

1 were four problem areas that we saw so we suspended  
2 billing until such -- it's often for reconsideration of  
3 these anti-cramming measures that were put in place,  
4 proved to be successful. So, right now, at AT&T, none of  
5 these four products are billable. And it was certain in  
6 the first quarter of 2010 most of those were in effect  
7 that way. Okay?

8 All right. Anti-contractual measures that  
9 we've adopted and changed in 2010 include customer  
10 notified of a service, price, telephone billing before  
11 completion of the purchase. Customers must consent to  
12 purchase and to be billed on their telephone bill.  
13 Potentially misleading types of marketing that promoted,  
14 even if generally available, in a lawful, these would  
15 include sweepstakes, coupons, drawings, as an example.  
16 There's more to that than just those. Minimum  
17 authorization and verification requirements, we'll get  
18 into more depth later on.

19 We also have a double opt-in process for  
20 internet transactions. Self-help websites for consumer  
21 inquiries, clearinghouse obligated to actively oversee  
22 service providers, annual audits of clearinghouses and  
23 performance, cramming complaint fees, and maximum  
24 cramming complaint thresholds. Okay. And we'll go into  
25 selected anti-cramming measures in more detail right now.

1                   Our verification requirements, all  
2 transactions, minimum baseline verification requirements  
3 for all transactions, some similar to the existing letter  
4 of authorization. Third-party verification requirements  
5 for regulated telecommunication services. Internet  
6 transactions are heightened verification.

7                   We require first and last name, billing  
8 telephone number, address, including street, city, state,  
9 and zip code, confirmation of your legal age to purchase,  
10 confirmation of authority to bill on the telephone  
11 account, some form of nonpublic information, such as date  
12 of birth, last four digits Social Security number, and  
13 it's validated by independent provider such as Lexus or  
14 Experian. So, who's doing that other valid -- there's  
15 another party involved in the validation of the customer  
16 versus just the sole provider doing that. Okay?

17                   The double opt-in process for internet-based  
18 transaction, notice of authorization, verification  
19 requirements during the initial sales process. Second  
20 opt-in process required after customer has authorized the  
21 transaction, customer sent confirmation of product,  
22 price, and term commitment. Customer asked to confirm  
23 the purchase, customer must affirmatively confirm the  
24 purchase before billing.

25                   So, after the sales and marketing and you

1       agreed to this product, what this -- what we're trying to  
2       do here is eliminate people that just were just trying to  
3       get additional information to realize that they made a  
4       purchase by hitting the button, thinking that they're  
5       going to get incremental information.

6                So, what we wanted to have was a two-page  
7       process where here's marketing information about the  
8       product service, here's the price, you consent, they did  
9       a validation, it comes back and it's a separate page  
10      without the marketing material available, bold letters,  
11      this is going to be on your telephone bill, here's the  
12      price, do you agree. So, it's a double opt-in process.  
13      This has been in place effective since 1/1/2011. So, we  
14      just put this into place this year.

15              Okay. Self-help website for customer  
16      inquiries. Clearinghouse must provide customer self-help  
17      website. We print this on the telephone bill with the  
18      charge. So, the customer has a question and they don't  
19      want to go -- oh, thank you -- if the customer has a  
20      question and they don't want to call us, AT&T, or the  
21      service provider, they can ask for the adjustment via the  
22      website. Okay, so, simplify it, you don't have to get in  
23      a call queue. You can go ahead and take care of it  
24      there. We also get that data back from the  
25      clearinghouses on the utilization of those type of

1 metrics, also.

2 Websites must permit customers to report and  
3 resolve complaints. Website must allow customers to  
4 block the billing. Resolution is required within four  
5 business days with confirmation to the customer. And the  
6 URLs, as I state, is on the bill itself.

7 Okay, clearinghouses are obligated to actively  
8 oversee the service providers. This is a partnership,  
9 but this is going to be effective. I personally met with  
10 all of our clearinghouses, and they understand their  
11 oversight requirement, and they actively are going to be  
12 participating. I'm sorry.

13 Oversight of internet services sales and  
14 campaign channels, and they will provide data -- and my  
15 time is done, they're telling me. So, what I'd like to  
16 do -- oh, well, thanks. Cramming complaints, fees, how  
17 do I go back there?

18 Sorry about this. Cramming complaints, fees,  
19 maximum cramming complaints and thresholds. We charge a  
20 -- we assess \$150 fee per cramming dispute. Maximum  
21 cramming complaint thresholds apply to each clearinghouse  
22 and service providers. Complaints cannot exceed .75  
23 percent of bills rendered per month in any AT&T Telco  
24 region. AT&T may limit, suspend, terminate, bill if the  
25 clearinghouse or service provider exceeds the threshold.

1 Typically we'll get a performance review, see how they're  
2 doing and give them a couple months to reduce complaints  
3 and/or if they cannot, they're terminated from our  
4 service.

5 Okay. How do we know if we're effective? We  
6 have a third-party, independent, external audit to go and  
7 ensure that these new rules are being followed and  
8 they're compliant. Okay. So, the performance of every  
9 clearinghouse is audited annually. Audits are conducted  
10 by a major audit firm with relevant experience in this  
11 area. Audit scope determined by AT&T. Scope includes  
12 performance of active oversight obligation of the  
13 clearinghouse.

14 Complaints with the anti-cramming measures,  
15 compliance with the truth-in-billing, and the results  
16 that we've seen as a result of these new third-party  
17 improvement plan, I've seen 70 to 75 percent reduction in  
18 cramming complaints that are calls coming in to AT&T.  
19 I've seen about a 70 percent reduction in general billing  
20 inquiry calls coming in. And we've also seen in our  
21 executive appeals coming in.

22 What-else data is constantly changing. We have  
23 to be always looking at the data and may need to modify  
24 our program as we go forward, and that is the purpose of  
25 the audit and the purpose of working with the DOJ and the

1           FTC. And as we get more information as we forward, this  
2           is a modified thing.

3                       I think we've done a good job, this thing, but  
4           I don't think we're finished. We're going to continue to  
5           observe. We're going to continue to think of better ways  
6           to perform. Okay. I'm completed. Thank you very much.

7                       MS. BUNGO: Don, we'll turn it over to you.  
8           Don is patched in by telephone. Are you able to hear us,  
9           Don?

10                      MR. TEAGUE: Yes, I am. Thank you very much.

11                      So, again, thank you for having me. To repeat,  
12           I'm Don Teague, the CEO for MORE International. We're a  
13           small, back-office software company. We supply outsource  
14           CRL billing and reporting services for our clients. We  
15           have been in business for six years with a number of  
16           clients billing to the phone bill. And prior to starting  
17           MORE, I was with one of the LEC processors as the VP of  
18           sales.

19                      The three major reasons that I really  
20           volunteered to be involved here was that, number one,  
21           consumers need to be protected with standardized and  
22           proven validation and authentication. The true cramming  
23           needs to be addressed. That sounds like the FTC is  
24           serious about addressing it, which is perfect. A lot has  
25           changed in the LEC world since the LEC and the internet

1 have come together. And I think clearly the industry has  
2 struggled to keep up with those changes, and I believe  
3 that MORE can assist with creating some standards to  
4 test. I don't know that the optimum solution is known  
5 here today, but I think that we need to test a few things  
6 to get to that silver bullet.

7 Second real point is that LEC billing has a  
8 place in the payment's ecosystem, especially for digital  
9 goods and services. There's an appropriateness to having  
10 digital charges be on a digital bill, and phone companies  
11 often have a longstanding relationship and credit history  
12 with their consumers.

13 And the third -- the third real reason I joined  
14 is that consumers need and want multiple payment options.  
15 I've been in eCommerce payment space for over 15 years.  
16 I know for a fact that more payment options means more  
17 commerce, and in light of today's credit climate now more  
18 than ever consumers need payment alternatives in order to  
19 conduct commerce.

20 In terms of, you know, things we've done, seen,  
21 or can recommend to address the issue, I think the  
22 telemarketing one is the easiest probably to address.  
23 The telemarketing B2B cramming I think can be resolved by  
24 the sheer fact that disk space is so cheap today, I think  
25 this was recommended earlier, and I agree, that 100

1 percent of telemarketing calls should be recorded and  
2 stored and made available to whatever enforcement agency,  
3 phone company, processor wants to see them alone with the  
4 third-party is a fair indication. I think that's a slam-  
5 dunk for solving the cramming associated with that piece  
6 of the industry. I think the real opportunity for  
7 improvement is in the cramming associated with the online  
8 -- online sign-ups and online registrations.

9 MORE has a little bit of experience here. We  
10 spent a number of months handling some validation and  
11 authentication for our clients. Now, this was prior to  
12 the phone companies -- I think it was probably six-plus  
13 months ago -- that the phone companies demanded that the  
14 processors start to handle the validation and  
15 authentication.

16 But we handled it for our clients for a number  
17 of months, and we used name, address, phone number, and  
18 date of birth. And we triangulated this data to create a  
19 confidence for that this person was who they say they  
20 were. And we encouraged our clients to leverage this  
21 system, though at the time it was not required by the  
22 LECs or the processors because we felt that the current  
23 standards were not stringent enough.

24 I think that AT&T certainly has stepped up to  
25 that. I think what we need now is a set of standards

1 that is ubiquitous across all of the phone companies in  
2 order to make this work. Now, whether or not the  
3 solution we used back then of name, address, phone  
4 number, date of birth is the right one, I think others  
5 need to be tested.

6 And some suggestions there would be that we  
7 might also test something like having the consumer make a  
8 call from the phone number that they're wishing to bill  
9 to to -- to ensure that they want to, in fact, establish  
10 that transaction. The name, address, phone number might  
11 extend to date of birth or Social Security number or some  
12 other out-of-the-wallet question.

13 And maybe even a more kind of grandiose  
14 solution would be the creation of a wallet, where  
15 sometime where a one-time stringent process may include  
16 all of the above and something else we haven't thought of  
17 yet or tested be used to create a master phone billing  
18 account, something I lobbied for a couple of years ago,  
19 and then use a new user name and password to allow the  
20 consumer to bill to their phone bill if that's what they  
21 choose to do, maybe something similar to what you see in  
22 PayPal or other stringent sign-in processes that allow  
23 for easier transactions thereafter. I'm looking forward  
24 to the discussion. Thank you.

25 MS. BUNGO: Thank you very much for your

1           comments, Don. And we turn over to John McGlamery.  
2           John?

3                       MR. MCGLAMERY: And, again, my name is John  
4           McGlamery, Senior Deputy Attorney General at the Bureau  
5           of Consumer Protection, the State of Nevada.

6                       I was asked to talk about what the billing  
7           industry -- telephone industry is doing to detect,  
8           monitor, and prevent. Unfortunately, I can't comment on  
9           that other than to tell you what the problem is and how  
10          sometimes those steps are not all that effective because  
11          the scammers are becoming very good at going around  
12          those.

13                      And, basically, what I want to discuss are  
14          three different outfits that we know did this. What they  
15          did is they had basically your long distance, your  
16          voicemail, your e-mail, products that there's a huge  
17          demand for, to pay \$20 a month for these days. And they  
18          set up different companies. They set up 30 different  
19          companies. On the long distance alone there were 14  
20          different companies. On the voicemail, there were, I  
21          think, five or six; on the e-mail, there were five or  
22          six; on the directories, there were five or six, too.

23                      And each of these corporations was set up in  
24          Nevada, which is unfortunately the haven for every scam  
25          that came along because our good legislature doesn't

1           require much of anything to set up a corporation. In  
2           fact, you don't even have to identify the true people  
3           involved. You can set up proxies.

4                        So, what they did is, this case, set up all  
5           these different entities as corporations. And each of  
6           the persons that was supposedly the owner had absolutely  
7           no background in the Telecom industry. Most were real  
8           estate agents and teachers and when we asked them, you  
9           know, why were you involved in this, they said, oh, it  
10          just sounded like a good deal, you know, we didn't have  
11          to do any work and we were getting a \$5,000 check each  
12          month. So, it was basically a shell game.

13                       And we talk about the threshold, and we talk  
14          about those verification processes and all. What's  
15          interesting about these companies is that they all  
16          provided exactly the same service for exactly the same  
17          price. The only difference was the name of the company.

18                       And why would they do that? Well, when we  
19          started investigating these, we found that they were  
20          intentionally looking at the threshold processes from the  
21          LECs. And they would start billing for company number  
22          one until the threshold was met. And then they would  
23          rotate to number two until the threshold was met. And  
24          then they'd rotate to number three until the threshold  
25          was met.

1                   We don't know how many dollars we're talking  
2                   about nationally, but we know that in Nevada, which is  
3                   one of the smaller states, we had \$600,000 in bills for a  
4                   period of eight months. That's an awful lot for a small  
5                   state. And not one of the people we've contacted had any  
6                   idea what they were getting.

7                   So, the verification process alone is not  
8                   sufficient. The scammers already know how to get around  
9                   it. And like I say is I know at least three different  
10                  organizations, one in Minnesota, one in California, and  
11                  one in Florida, that did exactly this. They worked a  
12                  system to get around the verification processes and all.  
13                  And if you heard my comment earlier, when we got the  
14                  verifications, the data that was in them was obviously  
15                  downloaded from a list. They just didn't even bother to  
16                  telemarket or market at all. Although we do know they  
17                  were using surveys in some of it, but we think that they  
18                  just got a list and then started billing off that list.

19                  So, the verification processes up until about a  
20                  year, year and a half ago, are simply not sufficient.  
21                  There's got to be something more. We -- I'm a big  
22                  advocate that they should just do away with third-party  
23                  billing through the LECs. I mean, it was intended years  
24                  ago when the first Ma Bell broke up to allow these  
25                  companies that were providing these other services to get

1 onboard. Today, it is just nothing but a haven for  
2 scammers. And I have yet to see any evidence that third-  
3 party billing through the LEC billing is needed, except  
4 for scammers who are making off with all kinds of money  
5 on this thing.

6 A couple of things that Nevada unfortunately  
7 does not have good laws on the civil side. I can  
8 prosecute civilly or criminally. A thousand-dollar fine  
9 for a violation is simply not enough to be a deterrent.  
10 However, good legislature in adopting some other remedies  
11 gave us a golden one, and I think since then it's really  
12 been effective because we've really seen cramming drop,  
13 and that is criminal racketeering. We now have a new  
14 criminal racketeering law which says that if you engage  
15 in fraud of two or more people where the amount taken is  
16 more than \$650, we can file felony and criminal  
17 racketeering charges, which allows for seizure and all  
18 the other nice, nifty remedies for that.

19 So, we're looking forward -- I haven't had any  
20 chance to use it yet, but we're looking forward to it,  
21 because if we see another one, we have a nice criminal  
22 racketeering charge to bring forth. You know, these are  
23 the kind of things, tough remedies, make it -- another  
24 thing is they try to do all of their business over the  
25 internet. By Nevada law, you're supposed to have a

1 written confirmation notice sent to the consumer at his  
2 address. In none of these cases did they do that. They  
3 say, well, we just sent it to the e-mail. Well, what's  
4 their e-mail? And it's completely wrong. There's no  
5 contact with the consumer whatsoever.

6 One of the problems with the LECs that we've  
7 seen, and it's still a problem, they've got to give a  
8 refund, but only for one month. Turns out to be this  
9 person's maybe been billed for several months. So,  
10 that's another problem with the -- that the industry  
11 needs to take a look at as far as these scammers, because  
12 the industry is making money on it. They're not doing  
13 this for free. They're making money on it, so there's  
14 this incentive not to take the necessary steps. They  
15 need to do more to protect the consumer.

16 The last thing is, and I don't know how many  
17 people have seen a bill for a third-party billing -- if  
18 it comes through an aggregator -- billing aggregator  
19 bills, but that's what they are. There's no information  
20 on them. If -- at most, you might see Inc21.com. What  
21 the heck is that? They don't -- there's no address,  
22 there's no phone numbers, there's no nothing. And the  
23 phone numbers usually go to the billing aggregators.  
24 They don't go to the companies themselves.

25 So, we get the complaints, we have to do a

1           tremendous amount of time investigating who these people  
2           really are. The LECs, the local exchange carrier, you  
3           know what I'm talking about, don't you? The local phone  
4           companies? Really need to do more to get the  
5           information, have that information available to the  
6           consumer so the consumer knows who the real party is  
7           billing them, instead of just force -- basically playing  
8           this shell game like we saw setting up all these  
9           different corporations.

10                         Have I got any time left, or are we still  
11           going?

12                         MS. BUNGO: You do.

13                         MR. MCGLAMERY: I do, okay. So, anyway, we  
14           would like to see no billing through the LECs. I mean,  
15           it just doesn't make any sense anymore in this day and  
16           age. Same thing with the wireless. If you want your  
17           dial tones, you know, unless -- unless you opt in with a  
18           written opt-in, that way you preserve the ability to do  
19           those things, but you're getting around this shell game,  
20           you're getting away from the ability to just grab a  
21           telemarketing list and just start billing people. You  
22           get around those things by having something that's  
23           independent.

24                         And what we found is that the reason that these  
25           scammers avoid the mails is simply because they don't

1 want to be charged with mail fraud. So, they don't do  
2 anything by mail. Make them go through the mails. That  
3 also identifies where they're located. It also  
4 identifies -- gives providing information to the  
5 consumers so that they have some idea of what's going on.  
6 And if the consumer truly has purchased this, they're  
7 going to sign off on it. But I would suggest that these  
8 industries will go out of business simply because there  
9 really is no demand, there's no market. It's all one  
10 giant shell game. It's all one giant fraud. Thank you  
11 very much.

12 **(Applause).**

13 MS. BUNGO: We'll hear from Rich next.

14 MR. GOLDBERG: Good morning. I love working  
15 with the FTC, but they always put me on right before  
16 lunch, which is difficult with everybody's stomachs  
17 growling, but I'll try and keep it interesting.

18 My name is Rich Goldberg. I'm an Assistant  
19 Director with the Office of Consumer Protection  
20 Litigation of the Department of Justice here in  
21 Washington, DC. We do all kinds of consumer fraud cases.  
22 We do civil cases; we do criminal cases. And as of 2009,  
23 mid 2009, I had never heard of cramming before, until I  
24 talked to the FTC's criminal liaison division, which does  
25 an excellent job of referring criminal cases to U.S.

1 Attorney's Offices and to our office, as well.

2 And I was told of a case in the Southern  
3 District of Florida that the FTC had brought in which it  
4 was clear that the individual had acted with an intent to  
5 defraud. And we, again, we get a lot of referrals from  
6 the FTC, and generally speaking, there is a pretty  
7 significant amount of work that we need to put into the  
8 cases over and above what the FTC puts in on theirs. But  
9 I was told that this was pretty much a slam-dunk.

10 And after speaking with the attorneys who did a  
11 great job on the civil case, I was convinced that my  
12 nine-year-old daughter could have brought this  
13 prosecution. This was an individual, Willoughby Farr,  
14 who had operated a \$35 million cramming scam from prison.  
15 He had been in the West Palm Beach County Jail and had  
16 billed hundreds of thousands of people's telephone bills,  
17 while sitting in jail.

18 And the FTC had brought a case and had seized a  
19 lot of the assets that he never got to enjoy because he  
20 was in jail. But they include mansions, two huge  
21 mansions in south Florida. They included a lot of  
22 different kinds of very fancy cars. I'm not a car guy,  
23 but if you are, you'd be very impressed with the cars  
24 that he got. He got yachts. Again, none of this was he  
25 able to take advantage of because he was waiting to get

1 out of jail to take part in enjoying the fruits of this  
2 fraud that he had committed.

3 And what's more, this isn't one of the cases  
4 like Beth had discussed and like Larissa had discussed  
5 where there's some face being put on the business, that  
6 is, that they are actually providing a service. There  
7 were no services that Willoughby Farr was providing to  
8 customers. These were purported collect calls that  
9 people had made that never were made at all. They simply  
10 bought lists of people's names, phone numbers, addresses,  
11 all their identifying information, and submitted it to  
12 billing aggregators who then submitted it to the LECs.

13 Now, Willoughby Farr had a felony record. He  
14 had both federal fraud that he had been convicted of  
15 before he engaged in this \$35 million cramming scheme.  
16 He had been convicted of state fraud. His rap sheet was  
17 over 20 pages long. And he was only in his mid thirties.  
18 And yet he was able to submit \$35 million worth of  
19 charges to LECs. How does this happen?

20 So, we were able to bring the prosecution  
21 against Willoughby Farr within a couple of months, and he  
22 was arrested in February of 2010. But we later learned  
23 that Farr continued to engage in cramming, even while he  
24 was in jail on our charges, the federal charges. And we  
25 subsequently charged another individual with helping Farr

1 to commit fraud while in jail on our charges. And that  
2 was in 2010 that he was engaged in that conduct.

3 So, this isn't back in 2006. This isn't back  
4 in 2005 that this conduct was stretching through. It was  
5 stretching through 2010. And, so, what is being done is  
6 clearly not enough. If somebody can, from a jail cell,  
7 have other people operate on their own behalf to submit  
8 bills for completely fraudulent charges, as smart as  
9 people can be to try and figure out ways to increase  
10 verification and increase the role of individuals  
11 reviewing applications, the scam artists are devoted to  
12 100 percent of their day coming up with ways around that.

13 If there are thresholds that are -- that if  
14 they're passed LECs will kick out the third-party biller,  
15 the scam artist will figure out a way to get around that  
16 by, again, as John was talking about, moving their sales  
17 to another business under a different shell and then  
18 billing under that shell.

19 So, this is not something that we can say  
20 here's a solution and then say, okay, this is going to  
21 solve the problem for here on out. As long as there is  
22 LEC billing of these sorts of third-party services, there  
23 will be scam artists trying to take advantage of it and  
24 coming up with effective ways of putting fraudulent  
25 charges on people's phone bills. So, it takes vigilant

1 law enforcement, but also a significant amount of effort  
2 on the part of third-party -- on the part of LECs and  
3 others in the industry to make sure that this problem is  
4 addressed.

5 And we look forward to the panel and additional  
6 future conversations about steps that can be taken  
7 because, again, as is very clear, scam artists are going  
8 to continue as long as there is LEC billing for these  
9 services. So, we need to continue to evolve as they  
10 evolve. Thank you.

11 MS. BUNGO: Let's here from Laura Kim.

12 MS. KIM: Good morning. Before I jump into  
13 some brief remarks, I wanted to start with a short  
14 anecdote that I think illustrates the really persistent  
15 and pervasive nature of cramming perfectly. As Rich  
16 mentioned, in 2006, the FTC sued Nationwide Connections  
17 and the mother/son duo behind it, Willoughby Farr and his  
18 mother, Mary Lou Farr. And as has been described, it  
19 involved this massive collect call cramming scheme that  
20 happened from within the Palm Beach County Jail.

21 And his mother, Mary Lou Farr, who we sued,  
22 profited handsomely from this. She received millions and  
23 millions of dollars, and after we had settled with her,  
24 you can imagine my surprise when about a year later I got  
25 a call from her saying you'll never believe what happened

1 to me. I've actually been crammed. I just got a bill  
2 with a \$65 charge that I never -- I never authorized.  
3 How can this be happening?

4 **(Laughter).**

5 MS. KIM: So, the question I have for all of  
6 you today is if a cramming defendant can't avoid being  
7 crammed, who can? And I think we all have come today to  
8 try to put our heads together and figure out what more  
9 can be done. And I think everything that we heard at  
10 panel one and prior to now confirms there is more that we  
11 can do and there is more that we really have to do to try  
12 to stop this problem.

13 So, I want to offer a couple of thoughts that  
14 obviously the disclaimer that these are my own thoughts,  
15 they're not those of the Commission or any -- not those  
16 of the Commission or any commissioner, but a couple of  
17 thoughts about what more could be done based on the  
18 particular role that aggregators play on the one hand and  
19 that the phone companies play on the other hand.

20 Turning first to the aggregators, there are two  
21 specific roles that the aggregators play that I think  
22 make them well positioned to be doing more to stop  
23 cramming. And the first is that the aggregator is the  
24 gatekeeper charged with responsibility for screening out  
25 the bad actors. As we all know, it's the aggregator who

1 has a direct contract with the vendor. And the LECs, not  
2 being in a direct contract with the vendors, rely on the  
3 aggregators to screen out bad actors.

4 But as we've heard today, is this screening  
5 process really enough? You know, Willoughby Farr, who  
6 was in prison, was able to get front people to help him  
7 pull off this business. Even after he'd been prosecuted  
8 by the FTC, he was able to find yet another person. And  
9 we couldn't connect those dots? Not after a \$35 million  
10 scam had been criminally prosecuted?

11 Of course the aggregators require vendors to  
12 fill out forms that indicate who their principals are,  
13 whether they've been terminated by another LEC or  
14 aggregator. But what does that aggregator do to  
15 independently verify that information? We know this  
16 platform is being used to perpetrate fraud. Are we just  
17 believing what the vendors say on the application, or are  
18 we actually taking independent steps to verify that that  
19 information is true?

20 Are we asking questions? Are the aggregators  
21 asking questions about whether the information on the  
22 application form points to connections with terminated  
23 companies? We know time and again we see vendors  
24 reformulate into a new company. It's not really new; it  
25 has a new name; it might have another person listed as an

1 officer. But they might be using the same customer  
2 service number. They might be using the same customer  
3 service vendor. They might be using the same P.O. box.  
4 These are all things that can point to connections with  
5 terminated companies, and you have to ask, are the  
6 aggregators doing enough to draw those links.

7 Second thing with respect to aggregators is the  
8 aggregators receive complaints from all sources about  
9 their vendors. They receive complaints directly from  
10 consumers; they receive them from the LECs who pass them  
11 on to the aggregators. The aggregators receive  
12 complaints from regulatory authorities, as we heard many  
13 times this morning.

14 And, so, the aggregators are in the best  
15 position to be looking at the trends and the complaints  
16 from all across the country, from all of these sources.  
17 In many cases, they're handling the customer complaints  
18 themselves, or sometimes they're even sitting on their  
19 vendors' handling of the complaints. When they get these  
20 complaints, what are the aggregators doing to  
21 investigate?

22 So, in Nationwide, the purported service was  
23 collect calls. And there were many, many complaints of  
24 the nature "I never could have received this collect call  
25 because the phone line that was billed was connected to a

1 modem." Or "I never could have received this collect  
2 call because this phone line is connected to a fax  
3 machine."

4 After hearing that complaint over and over  
5 again, you have to ask whether the aggregators could have  
6 done more to find out who are these supposed carriers  
7 that Nationwide is billing on behalf of. And yet it's  
8 unclear whether they ever actually insisted on that.

9 I want to turn now to the LECs and offer a  
10 couple of specific ideas about what the LECs could do to  
11 prevent and detect cramming further, based on their role  
12 as the entity that contracts directly with the aggregator  
13 and then is in direct relationship with the consumer.

14 First, I think LECs can and have to do more to  
15 educate their consumers about the fact that third-party  
16 billing exists. Many consumers who complain to the FTC,  
17 including those who filed comments for this forum,  
18 expressed outrage and shock that this even can happen.  
19 And as our history of law enforcement makes clear,  
20 cramming is a profitable scam because literally tens of  
21 millions of consumers never know that they were even  
22 charged. And in Inc21, for example, the court found that  
23 only 5 percent of the consumers in that tens of millions  
24 of dollars of fraud even knew that they had been billed  
25 for Inc21 services.

1                   So, even if the number of cramming complaints  
2                   that a LEC receives might be small, it's hardly  
3                   surprising given the vast number of consumers who may not  
4                   even know that they're being billed at all. And, so, as  
5                   the entity in direct contact with the consumers, I ask  
6                   whether the LECs can do more to ensure that consumers  
7                   know to look at their bills and examine them for cram  
8                   charges. And, similarly, the LECs are the ones in the  
9                   best position to be able to educate their consumers that  
10                  the option of third-party bill blocking is available.

11                  Second, the LECs have to hold the aggregators  
12                  accountable for allowing fraudulent actors to access  
13                  their bills. And I'm encouraged to hear about steps like  
14                  auditing the aggregators and holding them responsible.  
15                  I'm curious whether that's something that is industry-  
16                  wide. What are the LECs doing to ensure that the  
17                  aggregators who let Inc21 happen, who let Nationwide  
18                  Connections happen, who let, you know, Mercury Marketing  
19                  and Saferstein happen, what are the LECs doing to hold  
20                  these aggregators accountable? Or are they doing repeat  
21                  business with the same aggregators?

22                  And, third, what are the LECs doing to share  
23                  information that they already have with their counterpart  
24                  LECs, to ensure that terminated vendors are not  
25                  reincarnating and regaining access to the billing

1 platform under a different name? Nationwide with  
2 Willoughby Farr, he had actually been terminated with the  
3 prior incarnations of companies that he had before  
4 Nationwide. So, again, what are the things that the  
5 phone companies can do to share information with their  
6 counterparts to make sure that this does not happen  
7 again? Thank you.

8 MS. BUNGO: We are going to open up to question  
9 and answer and comment. If you have a question, if you'd  
10 raise your hand and wait for the mic to come to you and  
11 please identify yourself for the record.

12 MR. DAVIS: Hi, I'm Tom Davis, and I'm a  
13 citizen, a senior citizen, who's been crammed five times.  
14 And I'd just like to ask this group if it's appropriate  
15 to talk about John's idea about eliminating billing --  
16 third-party billing.

17 MS. BUNGO: You're curious as to others'  
18 perspective on the panel? Is that your question?

19 MR. DAVIS: I think it's an excellent idea, and  
20 I'd just like to hear what the negative is. What's the  
21 downside of third -- of eliminating third-party billing?

22 MS. BUNGO: I might ask if the industry  
23 representatives would like to speak to this? Kent or  
24 Don? Are there forms of legitimate third-party billing  
25 is the other way of asking this question, and what would

1 be the example.

2 MR. WARDIN: Yeah, I think there's --

3 MR. TEAGUE: This is Don Teague. There are a  
4 number of name-brand large companies using phone billing  
5 as a payment option, and I know that there's a number of  
6 other brands that have been interested in getting into  
7 this space, but because of those sort of, I think, lack  
8 of oversight coming up with standards specifically for  
9 the internet sign-ups, I think there's many waiting on  
10 the sidelines. I mean, there's some name brands out  
11 there like AOL and lizard games who are effectively using  
12 billing to the phone bill today.

13 And I think, you know, as I said earlier,  
14 there's a demand for additional payment options beyond  
15 credit cards, especially in light of what's going on in  
16 the credit industry, banking industry today. So,  
17 certainly, I guess it's an option that LEC billing be  
18 thrown out, but I think also one needs to look at what  
19 the potential, you know, impact is.

20 MS. BUNGO: Thank you, Don.

21 Kent, would you like to offer your comment?

22 MR. WARDIN: Yeah, I was going to echo that  
23 identical type of comment, that there are quality third-  
24 party services that are offered. We're here, you know,  
25 for myself, if a customer does get crammed and because I

1           have a lot more to lose with respect to the services that  
2           AT&T offers in the vertical and the substitution, so it  
3           does not do me any good to try to promote any of this  
4           type of activity. I mean, it's clearly not in AT&T's  
5           interest. But, yes, we do believe that this is an option  
6           that's available to consumers that is -- that's wanted by  
7           them.

8                         MS. BUNGO: Thank you, Kent. Are there other  
9           questions in the audience? We have one in the corner.

10                        MR. BREYVAULT: Thank you, John Breyault with  
11           the National Consumers League again. Question for Mr.  
12           Wardin: In your comments that you filed, you mentioned  
13           that the system -- the verification and authentication  
14           system that you described in your oral remarks had  
15           limited cramming complaints to less than .2 percent of  
16           all bills that include a third-party charge. Do you have  
17           data on how that compares to the number of complaints you  
18           received about cramming prior to the implementation of  
19           this system?

20                        MR. WARDIN: Yes. I've seen approximately the  
21           same similar thing, about a 70 percent reduction. So,  
22           all those data elements have been tracking very closely,  
23           meaning number of third-party billing calls coming in to  
24           our centers, number of cramming complaints, number of  
25           escalating complaints, and then the percentage I'm

1 actually at .14 for March, so it's even going down lower  
2 as we -- as we've been going along here.

3 MR. BREYAUULT: Thank you.

4 MR. WARDIN: Yep.

5 MS. BUNGO: Is there another question in the  
6 audience? I'm coming.

7 MS. DUSMAN: Thank you. Diane Dusman from the  
8 Pennsylvania Office of Consumer Advocate. Just a quick  
9 question for Mr. Wardin. I understood you to say that as  
10 of June 2010 you suspended I think third-party billing  
11 for (inaudible). Is that -- did I hear you accurately?

12 MR. WARDIN: No. No, not for -- new accounts  
13 for certain products? Is that what you're saying?

14 MS. DUSMAN: I understood you to say that in  
15 the June 2010 while looking at what was happening at the  
16 sub (inaudible) level, you made a determination that you  
17 were going to suspend the charges for new accounts. Is  
18 that not correct?

19 MR. WARDIN: That's -- no, that's not correct.

20 MS. BUNGO: It might be about the certain  
21 industries, you weren't accepting charges for certain  
22 types of --

23 MR. WARDIN: We -- yeah, we suspended  
24 voicemail, e-mail, February; eDirectory in April; and web  
25 hosting in May. Based upon how the third-party

1 improvement plan is being and how effective that is,  
2 we'll reconsider bringing those back on. But as of  
3 today, those are currently suspended, meaning that they  
4 cannot add new customers.

5 MS. DUSMAN: Okay, so, you meant that you won't  
6 accept any further charges to pass through --

7 MR. WARDIN: No --

8 MS. DUSMAN: -- to customers for those types of  
9 services?

10 MR. WARDIN: New acquisitions I'm not allowing.  
11 New sales.

12 MS. DUSMAN: Thank you for the clarification.  
13 My other question is I really like the idea of the self-  
14 help website for your customers. And how are you  
15 advising your customers that that exists? And does that  
16 enable them to completely block their phone charge  
17 (inaudible).

18 MR. WARDIN: The third-party bill block has to  
19 be done via our AT&T website. The other website that  
20 you're speaking of is actually maintained by the  
21 clearinghouse, the aggregator, or the service provider  
22 themselves. That's where they can request the specific  
23 charges, and it's multiple months, and it wouldn't have  
24 to be the current month that they're in, to be recouped  
25 back to them and get the appropriate adjustment. That is

1 printed on the bill, the telephone bill, in the section  
2 where the charges -- right below where that charge  
3 appears. So, it's -- they're kind of sorted together.  
4 It's a text message that gets sorted with that, so it's  
5 readily available for the consumer associated with that  
6 charge.

7 MS. DUSMAN: Also, does that apply to both  
8 wired line and wireless billing?

9 MR. WARDIN: No, this is -- I've been speaking  
10 wire line today. Okay.

11 MS. DUSMAN: So, you don't have any such device  
12 for wireless billing?

13 MR. WARDIN: With respect for the customers to  
14 call in and get adjustments?

15 MS. DUSMAN: Correct.

16 MR. WARDIN: They would call in to the AT&T  
17 service center to get all those adjustments. They would  
18 not call the provider of the service.

19 MS. DUSMAN: Thank you.

20 MR. WARDIN: That's how the wireless side is.

21 MS. BUNGO: We have another question pending.

22 Hi, my name is Bob Schoshinski, I'm an attorney  
23 here at the FTC, and I have a question about the  
24 verification of consumer authorization system that a  
25 couple of the panelists were talking about today and want

1 to frame it in regards to a personal experience I had  
2 with cramming. A couple months ago, my wife and I were  
3 looking at our phone bill and noticed a couple of monthly  
4 third-party charges on the bill that we didn't recognize.  
5 And, so, we confirmed that we hadn't ordered anything  
6 like that, called the local telephone company.

7 They were very, very good. They took the  
8 charge off immediately, offered a block, et cetera. But  
9 having worked in cramming cases in the past, I was  
10 interested to know how did they say that I had authorized  
11 this charge. So, I called the 800 number on the bill and  
12 spoke to the aggregator who then forwarded me to the  
13 purported merchant and talked to them.

14 And I asked them, you know, well, how do you  
15 know that I authorized this charge. And they said, well,  
16 somebody called and we have your name, and they gave me  
17 my name; your telephone number, they gave me my accurate  
18 telephone number; your address, they gave me my accurate  
19 address; and your birth date, and they gave me the  
20 correct birth year but an inaccurate birth date.

21 And upon having that information, what that  
22 told me is that someone, as John McGlamery had indicated,  
23 had accessed a data base of some sort and populated these  
24 sorts of fields with this information. So, the question  
25 is how does, you know, requiring that information ensure

1 that someone doesn't just take this information which is  
2 already publicly available and use it to engage in  
3 cramming.

4 MS. BUNGO: We'll open this up to anyone on the  
5 panel. Don, do you have a perspective?

6 MR. TEAGUE: Yeah, I mean, I think it's a good  
7 point. Confidence scoring is one way to go, but  
8 ultimately name, address, phone number, and date of birth  
9 may not be sufficient. Certainly it was a leap and bound  
10 ahead of where things were 12, 18 months ago. And, quite  
11 honestly, it's leaps and bounds away from -- better than  
12 what some of the phone companies are allowing today,  
13 which is simply a name, address, phone number, and any  
14 sort of other piece of data. I've seen things as, you  
15 know, like mother's maiden name and city you were born  
16 in, and I've never quite known how anybody could take  
17 that data and turn it into anything valuable. So, I  
18 think it's a good point.

19 Kind of back to what I was saying, I'd like to  
20 see some sort of form whereby we passed -- and I'd  
21 certainly, you know, like to be involved, where we test  
22 something that is more solid. Again, potentially we  
23 require the consumer to pick up the phone and call in in  
24 order to activate the account and maybe some other  
25 (inaudible) means can be considered. Maybe, again, maybe

1 stretch it out whereby it's a one-time sign-up process  
2 and we end up with a phone bill law.

3 MR. GOLDBERG: This is Rich Goldberg. I just  
4 wanted to comment on that. The problem is that that  
5 assumes that somebody is reviewing the data and verifying  
6 it. There's nothing -- as Bob pointed out -- there's  
7 nothing that would prevent firms from putting in data,  
8 sometimes false, sometimes correct. And it's assuming  
9 that somebody's going to verify it. We've had instances,  
10 some cases that have been discussed, where there are  
11 phony verifications being taped. And somebody ultimately  
12 says, that's not me on the phone providing that  
13 authorization.

14 So, assuming the fraudsters are going to put in  
15 data, sometimes correct, sometimes incorrect, sometimes  
16 correct verifications, sometimes incorrect verifications,  
17 it takes somebody seeing a cramming charge, and then  
18 going and having that charge taken off for anything to  
19 happen as a result. So, how does that solution of having  
20 taped verification prevent cramming from happening in the  
21 first place?

22 MR. TEAGUE: It's a good point. And  
23 potentially the industry needs to look at doing something  
24 similar to what was done back in the day to solve or  
25 identifying the phone numbers and how they were -- and

1       which phone companies owned a relationship with them -- I  
2       think that innovation is called LIDB or line item data  
3       base, and all of the phone companies were at one point  
4       and I think they continue to be mandated to participate  
5       in it so that we know what phone number that was, that  
6       the consumers associated with which phone company.  
7       Potentially an industry solution with some oversight by  
8       some sort of a government sort of entity whereby, you  
9       know, whereby that stuff can be checked.

10               MS. BUNGO: I think Kent would like to make a  
11       comment.

12               MR. WARDIN: Yeah, the only thing that I would  
13       like to comment is that he did say it was the wrong birth  
14       date, and today we have an external third-party  
15       requirement to validate that type of information. So,  
16       that was probably done by not like an Experian or a Lexus  
17       that's a valid third-party, you know, person to validate  
18       that type of data.

19               MS. BUNGO: Thank you.

20               MR. TEAGUE: I apologize, I missed that point.  
21       In the system that we ran for a few months, name,  
22       address, phone number, and date of birth, you know, we  
23       strongly encouraged it all to match, even though it  
24       wasn't a requirement.

25               MR. WARDIN: Right.

1                   MR. TEAGUE: Of the time, just because, again,  
2 I think that the industry of the internet and LEC billing  
3 are struggling to come together and make it happen.

4                   MR. WARDIN: Right, right, and that's why we  
5 preferred to have an independent party do that validation  
6 versus the same party making the sale.

7                   MR. KERBER: In addition -- this is Mark Kerber  
8 from AT&T. AT&T's current contractual requirements would  
9 not regard date of birth as a valid form of final  
10 verification because that's easily available on a lot of  
11 public data bases. It has to be so called nonpublic  
12 information, last four Social, we have a couple of other  
13 things that we allow.

14                   And then as Kent mentioned, it has to go out  
15 and be verified by somebody who is qualified and  
16 independent, like Lexus/Nexus or Experian. That's still  
17 not going to be perfect. It's still not going to be  
18 bulletproof, but we tried to create a system where  
19 somebody couldn't just go to some kind of a publicly  
20 available data base, get your publicly available  
21 information, stuff like DOB that does show up on all  
22 kinds of places, and just populate forms.

23                   MR. MCGLAMERY: I have a question for the  
24 industry people. Tell me what the downside is for  
25 requiring opt-in and written verification between the LEC

1 and the customer that this is a valid charge. I mean, I  
2 know there's an extra step, but of course the LECs can  
3 recoup it via their billing process back to the original  
4 merchant. It's the -- maybe I can just leave it there.  
5 What's the downside of having to -- requiring opt-in from  
6 the LEC to the customer and the downside of requirement  
7 and verification from the consumer back? That would  
8 still allow for billing, but it would certainly provide  
9 something that's independent of the billing aggregators  
10 and the merchants.

11 MR. WARDIN: You know, without having all the  
12 data sitting in front of me and what the cost and the  
13 implication that's going to be, I really don't want to  
14 answer to that. That is -- it's an interesting thought.  
15 You know, willing to look at it, but, you know, it's kind  
16 of like -- it's a concept that, you know, that can be  
17 examined as part of a future panel or something, you  
18 know, on some of these steps.

19 MS. BUNGO: Thank you. I know we have a  
20 pending comment over here.

21 MR. WOLFE: This is Doug Wolfe from the Federal  
22 Trade Commission. And, again, these questions and  
23 comments are my own and not those of the Commission. And  
24 I have a couple. Since we're on the topic of  
25 authorizations, and I was happy to hear Mr. Teague

1 advocate a requirement of recording an entire  
2 telemarketing transaction, because it is cheap to do now  
3 and since 2003, the FTC rejected the argument and amended  
4 the Telemarketing Sales Rule to say that it was too  
5 expensive to maintain recordings, because, as we all  
6 know, you can record literally and maintain hundreds of  
7 thousands of digital recordings on a device that's no  
8 bigger than your thumb.

9 But on the issue of data and your personal  
10 information that's out there and available, it seems to  
11 me that there is just simply too many opportunities out  
12 in the ethosphere to grab consumers' personnel  
13 information, to use it to populate false letters of  
14 authentication or to say that this is the verification of  
15 something that you've ordered, as my colleague, Mr.  
16 Schoshinski mentioned happened to him personally.

17 But sometimes the information in there is going  
18 to be your actual birth date, because I know that I  
19 filled out forms before where I've put in my birth date  
20 and I've put in my Social Security number, and I've put  
21 in my mother's maiden name. All that information is out  
22 there somewhere for somebody to buy and to use and to say  
23 that I or someone else authenticated a charge using this  
24 personal information.

25 How about monitoring the actual usage of the

1 product or service being billed for and asking for  
2 authenticated, technically sound evidence that the  
3 consumer is actually using what they're billed for? And  
4 that is if you can even get past the premise that the  
5 consumer Mr. Davis mentioned, is this required at all.

6 And that brings me to my next comment. Given  
7 the prevalence of consumer complaints which are now no  
8 longer anecdotal, we saw them in Inc21, they have been  
9 validated by a court. We've seen them in numerous other  
10 law enforcement investigations that have been mentioned  
11 here, that consumers overall are still unaware that  
12 third-parties can bill them on their phone bills.

13 If you can get past the premise that consumers  
14 want this at all, it seems to me to be a flawed  
15 monitoring premise to monitor the number of complaints  
16 you receive per month, and it's certainly flawed to  
17 monitor the number or percentage of complaints you  
18 receive versus bills rendered, because consumers simply  
19 don't know that this can happen. And, yes, this billing  
20 has been permitted for over 15 years now, but we still  
21 get complaints on a weekly basis where people say I  
22 didn't know this was legal.

23 And then the final point related to that is  
24 that customer service departments for telephone companies  
25 and billing aggregators and merchants' customer service

1 departments are continuing to tell consumers that  
2 allowing third-party billing is required by the  
3 government. Maybe somebody here can enlighten me on how  
4 that is true, because it seems to me to be a false  
5 statement and it's still being made today.

6 MS. BUNGO: Thank you, Doug. I'll offer an  
7 opportunity to respond from anyone in the industry.

8 Don, do you have any parting, final comments?

9 MR. TEAGUE: No.

10 MS. BUNGO: No? All right, thank you.

11 MR. KERBER: I can actually catch just the last  
12 question. Third-party billing was required beginning in  
13 1984 by Judge Greene's consent decree for the RBOCs. Any  
14 RBOC that was going to bill long distance or information  
15 services on behalf of AT&T had to do so on an equal  
16 access basis for any other providers. That was everybody  
17 at the time because at the time of divestiture, AT&T had  
18 no organic billing capability.

19 So, at least for the bread-and-butter  
20 telecommunications and information services that was a  
21 requirement. That's no longer true at least for my  
22 company, for AT&T. I think it's probably also not true  
23 for the others. But that has been a relatively recent  
24 development. Essentially, we were freed of that  
25 obligation with 272 relief, which for the SBC companies

1 was November of 2007.

2 And, so, we did, in fact, you know, have  
3 information in our methods and procedures that our  
4 service reps would use at one time that would, you know,  
5 if somebody said why is this on my bill, they would say,  
6 well, you know, we're required to bill for other long  
7 distance companies or something like that.

8 Those methods and procedures have all been  
9 modified, at least -- again at the AT&T companies. It's  
10 certainly possible that some of the old service  
11 representatives that have been with the company for, you  
12 know, 25 years, which is basically, you know, how far  
13 we're looking at, are -- yeah, you know, these people,  
14 you know, that the things they've said for 25 years,  
15 probably some of those reps it's pretty deeply ingrained  
16 and they haven't been fully retrained yet, but we did  
17 change those methods and procedures. We've trained  
18 multiple times on the new methods and procedures. So,  
19 hopefully, we don't have any or realistically, probably,  
20 hopefully, we don't have very many people still saying  
21 that.

22 MS. BUNGO: Thank you, Mark Kerber, for his  
23 comments. I think we are past our time. Lois?

24 So, I think we will conclude this panel. I  
25 thank everybody for their participation and discussion.

1 Thank you very much.

2 **(Applause)**.

3 MS. BUNGO: And we are on lunch break to come  
4 back at, let's see, looks like 1:30. We'll see you at  
5 1:30. Was there any other announcement, Shameka? Thank  
6 you very much.

7 **(Lunch Recess)**.

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**SESSION 3: APPROACHES TO CRAMMING PREVENTION:**  
**HOW ARE THE MOBILE AND LANDLINE**  
**BILLING PLATFORMS DIFFERENT**

MR. SCHOSHINSKI: Good afternoon and welcome back to the afternoon panels for the FTC's cramming forum. My name is Bob Schoshinski. I'm an attorney here at the Federal Trade Commission, and I'm very excited to be moderating this panel, panel three, which will look at approaches to cramming prevention on both the mobile billing platform and the landline billing platforms and how they are different and how they are the same and what each platform is doing to learn from what the other is doing.

If you were here this morning, you may have heard David Vladeck's opening remarks in which he referred to a letter that Senator Rockefeller sent to the Chairman of the FTC regarding this forum. And he had some good quotes from that. And I thought there was one line from the letter that's particularly pertinent to this panel this afternoon, and that is where Senator Rockefeller wrote, "Although there are many differences between the third-party billing systems on landline and wireless telephones, some of the lessons learned from cramming on landline telephone bills will likely be

1 applicable to payment methods still developing on  
2 wireless phones."

3 I thought that was particularly pertinent to  
4 this discussion. I think it may also work in the  
5 reverse. I think there may be things that are being done  
6 on the wireless platform that may be helpful or that the  
7 landline platform may be looking at, as well. And to  
8 help us explore these questions, we have -- we're  
9 extremely fortunate to have three panelists with broad  
10 experience and expertise in the landline and wireless  
11 telephone industries.

12 First, we have Glenn Reynolds, who is Vice  
13 President of Policy for U.S. Telecom. Glenn has the  
14 primary responsibility for advocacy before the federal  
15 government, including the FCC, NTIA, and other federal  
16 agencies. Prior to working at U.S. Telecom, he worked at  
17 BellSouth in a similar position. And prior to that, he  
18 had a number of positions -- management positions in the  
19 FCC and was responsible for implementing and enforcing  
20 various aspects of the Telecommunications Act in 1996.

21 We also have Mike Altschul, who is the Senior  
22 Vice President and General Counsel of CTIA, The Wireless  
23 Association. And prior to joining the CTIA more than 20  
24 years ago, Mike worked in the Antitrust Division of the  
25 U.S. Department of Justice.

1                   And, finally, we have Jim Manis, who is the  
2 Chairman and CEO of the Mobile Giving Foundation. He is  
3 responsible for the first use of mobile giving in  
4 response to relief efforts in the Asian tsunami and  
5 Katrina relief efforts when he was the Senior Vice  
6 President of m-Qube, which is a mobile billing  
7 aggregator. He also -- he founded the Mobile Giving  
8 Foundation and also leads the consulting firm 1024  
9 Wireless Services, which provides strategic direction for  
10 clients in the mobile space.

11                   And with particular relevance to this panel,  
12 Jim was very involved in the Mobile Marketing  
13 Association's development of their guidelines concerning  
14 third-party billing.

15                   And, so, without further ado, I'm going to turn  
16 it over to Glenn for his initial remarks.

17                   MR. REYNOLDS: Thanks, Bob, for having us here  
18 today. U.S. Telecom, for those of you who are not  
19 familiar with us, is the trade association for a large  
20 number of the incumbent local exchange companies  
21 throughout the country. It includes kind of a diverse  
22 membership in that we include both the largest companies,  
23 Verizon and AT&T.

24                   We represent a number of what are referred to  
25 as the mid-sized companies, such as CenturyLink,

1 Frontier, FairPoint, that are -- tend to be spread around  
2 the country and tend to have more properties in rural  
3 areas. And then we represent many, many very small  
4 companies throughout the country focused in rural areas,  
5 many of which have a couple thousand or even just a  
6 couple hundred customers and lines.

7 And I say that at the outset because I think  
8 it's important that when we're thinking about the causes  
9 and potential solutions for cramming that it would be a  
10 mistake to assume that the same steps will be equally  
11 effective for all companies. Not only do the companies  
12 have very different systems, but they also operate in  
13 very different customer environments. Many of these in  
14 very small towns in which they basically know all of  
15 their customers.

16 My previous experience with cramming is from a  
17 very different perspective. As Bob mentioned, I  
18 previously worked at the FCC and, in fact, in 1998, I was  
19 one of the managers in the Common Carrier Bureau's  
20 Enforcement Division when cramming sort of blossomed as  
21 in the number of consumer complaints we were seeing at  
22 the Commission.

23 At that time, then FCC Chairman Bill Kennard  
24 responded by calling the ILEC community together to see  
25 if they could identify practices that would work to deter

1 unauthorized charges from appearing on customer bills.  
2 While the FCC held open a threat that -- of taking a much  
3 more regulatory approach at that time, a more industry-  
4 driven answer was viewed as preferable for at least three  
5 different reasons.

6 The first was that we felt that the industry  
7 could help identify and, in fact, implement responses to  
8 cramming, much faster than the Commission could in a  
9 rule-making proceeding. Second, it was apparent that the  
10 ILECs had a self-interest in taking steps to deter  
11 cramming, both because of the cost of handling these  
12 complaints and because of the risk of ultimately losing  
13 the consumer if that consumer was unhappy with the  
14 service.

15 And, third, there was a recognition that from a  
16 public policy perspective there were, indeed, some  
17 consumer benefits from ILEC -- from LEC third-party  
18 billing, both in consumer convenience and in providing a  
19 convenient billing option for companies that were  
20 offering services that were in competition to or might be  
21 in competition to services that were being offered by the  
22 ILEC.

23 So, such third-party services as long distance,  
24 pay-per-call, conference calling, and prison pay phone  
25 services were typically viewed by consumers as a natural

1 complement to their local service, with a convenience and  
2 competition policy benefits from appearing on the  
3 customer's local bill. Today, related services might  
4 also extend to internet and broadband-related services,  
5 where the telephone company is also the consumer's choice  
6 of ISP.

7 The result of that ILEC effort begun at the  
8 urging of the FCC was the Industry Anti-cramming Best  
9 Practices Guidelines, which were developed and released  
10 within two months after Chairman Kennard first called the  
11 group together. While primarily driven by the ILECs, the  
12 final best practices guidelines also included input from  
13 the aggregator community and the service provider  
14 community and included a number of key elements: pre-  
15 acceptance screening of each provider's products,  
16 services, and marketing materials; procedures for  
17 monitoring compliant levels generated by each provider,  
18 along with complaint level targets under which the  
19 companies, providers, or aggregators could be terminated;  
20 requirements that providers implement appropriate  
21 authorization and verification procedures to ensure that  
22 consumers have, in fact, knowingly approved charges;  
23 assurances that bills received by consumers provide clear  
24 and comprehensible information concerning the services  
25 being charged and the consumer may question or challenge

1 those charges; establishment of customer dispute  
2 resolution procedures; recognition of the need to provide  
3 consumers with options for controlling what charges  
4 appear on their bill; and commitments to work with  
5 appropriate law enforcement and regulatory authorities.

6 The following year, the FCC went on to provide  
7 additional guidance in this area in adopting its truth-  
8 in-billing order. And in that order, the FCC adopted  
9 several principles to ensure that consumers received  
10 clear and comprehensive information on their bills,  
11 including that consumer phone bills be clearly organized,  
12 clearly identify the service provider and highlight new  
13 services, that bills contain full and non-misleading  
14 description of the charges that appear, and the bills  
15 contain clear and conspicuous disclosures of any  
16 information that the consumer might need to challenge the  
17 charge.

18 I raise these because these two sort of  
19 complementary documents, the Anti-cramming Best Practices  
20 Guidelines and the Truth-in-Billing Guidelines really  
21 form the foundation of what I think all the ILECs that  
22 I've spoken to within -- of my member companies are using  
23 as sort of the baseline for their -- for preventing  
24 cramming charges from appearing on a customer's bill.

25 In this regard, and I think there was some

1 mention of it earlier, but I do want to emphasize where  
2 the incentives lie for my member companies. I think in  
3 1998, at the time, competition, particularly in the  
4 consumer markets, was still in its developmental phase.  
5 Today, however, there is no question that ILECs cannot  
6 afford not to take steps to protect their customers from  
7 unauthorized charges appearing on their bills, because  
8 every one of those customers has multiple choices for the  
9 provision of services.

10 Just a couple facts. Today, five of the top  
11 ten voice providers in this country are cable companies,  
12 not long -- not ILECs. And 25 percent and growing of the  
13 customers out there have completely cut the cord and are  
14 using solely wireless companies as their voice provider.  
15 So, an unhappy customer is not going to be a customer of  
16 ours for very much longer.

17 While ILECs do make some profit from providing  
18 third-party billing, it is a tiny fraction of the  
19 revenues they lose when a customer switches to a  
20 competitor because he or she believes that the company  
21 has failed to adequately protect them from the  
22 unauthorized charges or failed to deal with their  
23 complaint in an appropriate manner. And this loss  
24 doesn't even account for the cost associated with dealing  
25 daily with any complaints that arise and the costs

1 imposed on customer service representatives.

2 Every one of my members that I've spoken to in  
3 this context gets this and accordingly takes the issue of  
4 cramming very seriously. Nonetheless, there is great  
5 value to dialogues like this periodically to point out  
6 the importance of constantly reexamining whether the  
7 steps each company is taking are working and provide a  
8 platform through which we can share ideas as to what best  
9 practices are most effective.

10 Oh, I didn't even know there was a clock going.  
11 Okay, so, I've kind of tried to break what the companies  
12 are doing to sort of three levels. The first level, and  
13 this kind of goes to a point that I think Laura Kim  
14 raised earlier, sort of a question that she posed to my  
15 industry. And that is preventing bad actors from ever  
16 getting access to the ILEC bill in the first place by  
17 ensuring that the contracts with the aggregators  
18 establish obligations for active monitoring and active  
19 oversight of all the providers for which they bill.

20 Among those that are typically used are  
21 requiring that the billing aggregator obtain and review a  
22 detailed application for each new provider, including a  
23 review of ownership and product information, the bill  
24 description of the services, 800 customer numbers, and  
25 marketing materials. This type of review in particular

1 at the front end can be very effective in preventing the  
2 crammers from ever getting on the bill in the first  
3 place.

4           Aggregator contracts should also require that  
5 services provided to utilize acceptable authorization and  
6 verification procedures. We've talked a little bit about  
7 the verification procedures. Obviously letters of  
8 authorization and third-party verification are the  
9 standard within the industry, but double-click options  
10 are increasingly being used with regard to internet-based  
11 transactions and welcome packages can be sort of a  
12 similar double-check on -- to confirm that customers  
13 have, in fact, ordered the service in other types of  
14 transactions.

15           The contract should include cramming complaint  
16 thresholds that we've talked about that are applicable  
17 both to the individual provider and to the aggregator and  
18 that the contract should provide that aggregators be  
19 subject to an audit. And this goes to some of the other  
20 questions that we have. It's certainly not enough just  
21 to have the standards that -- in these contracts, but the  
22 aggregator needs to be audited and the service -- and the  
23 aggregator needs to be auditing each of the service  
24 providers.

25           The second level that I sort of break it off

1 into is efforts at making sure that the customer's bill  
2 is as transparent as possible. And obviously a lot of  
3 this has to deal with things that are raised in the  
4 truth-in-billing guidelines. For example, third-party  
5 charges appearing on a separate section of a bill that  
6 makes it clear that the customer can challenge those  
7 charges without risking losing continuity of service.

8 Also, another important part, I think, was  
9 raised earlier was every time a new third-party biller  
10 appears on the platform -- on the bill, making sure  
11 that's emphasized up front and making sure that the  
12 customer has information on how to reach and -- reach  
13 that provider.

14 The third level of protection, and I'm going to  
15 skim a little, because my time appears to be running  
16 quickly.

17 MR. ALTSCHUL: I'll be happy to cede you my  
18 time.

19 MR. REYNOLDS: Okay. There's only three of us.

20 And as I also mentioned, the use of welcome  
21 packages in which, you know, the company is required to  
22 -- the service provider company is prepared -- is  
23 required to send approved specific information concerning  
24 what the customer is alleged to have ordered.

25 The third level of anti-cramming protection

1 incorporated by the ILECs involves what they do once a  
2 customer calls and complains. And I point out that while  
3 the companies clearly put information about how to  
4 contact the aggregator and/or the service provider, the  
5 entity that they call, by and large, is going to be their  
6 telephone company if this charge is appearing on their  
7 bill. And the standard practice of the member companies  
8 that I've spoken to in this regard is to provide a credit  
9 to the customer calling to complain about a charge he  
10 says he's unaware of or did not authorize, no questions  
11 asked.

12 The goal of a first-call approach is to provide  
13 the customer with full relief without having to make a  
14 call -- another call to the provider. While the customer  
15 is on the phone, the customer service rep can take that  
16 charge off the bill, it can arrange for all additional  
17 future charges to -- from that particular sub-kick to be  
18 blocked, and it can go back and review previous bills to  
19 ensure that there were not earlier charges that the  
20 customer paid without noticing.

21 Most providers also make a point of informing  
22 the customer at this time that he or she can place a  
23 block on the -- of all third-party charges on his or her  
24 bill at no charge.

25 An essential element of cramming prevention,

1 obviously, is the continuous monitoring of cramming  
2 complaints to identify potential problems that require  
3 implementation and remediation of the billing  
4 aggregators. Obviously, including these provisions in  
5 the contract make no difference if the companies do not  
6 actively monitor, follow, and evaluate the numbers of  
7 complaints that they're receiving and follow up and  
8 implement the abilities in the contract to suspend and  
9 terminate. And I can tell you all the companies that  
10 I've spoken to have, in fact, exercised their authority  
11 to terminate or suspend either multiple service providers  
12 or even aggregators.

13           Anyway, as I mentioned earlier, discussions  
14 like this one are helpful because they reinforce the  
15 importance of constantly reevaluating the processes that  
16 the companies have in place. I was commenting earlier  
17 that -- I think someone commented earlier that the bad  
18 actors out there are always kind of modifying and  
19 changing their strategies to evade this detection. And  
20 it's incumbent upon the companies themselves to respond  
21 in kind.

22           In my discussion preparing for this panel, and  
23 you heard a lot from, for example, AT&T this morning, but  
24 I found a number of my companies have also made  
25 significant reinforcements to their cramming defenses

1 over the past year or so and that these upgrades are  
2 significantly reducing the number of cramming complaints  
3 received by their customer service reps.

4 As the practices are most effective in  
5 combating -- as these practices evolve, I think forum  
6 like this are important to allow the companies to share  
7 what they're learning, which practices are working, which  
8 practices are not. That kind of also dovetails with  
9 another point that was raised earlier, a question that  
10 was raised earlier, which is should companies be doing  
11 more to kind of share information about bad actors. I  
12 think it's a great idea. I think it's something that  
13 should be looked into. I think it's something that  
14 clearly needs to also include the aggregator community,  
15 since they to some degree have even better insight to a  
16 broader range.

17 I would throw a question out there to those of  
18 you here from the FTC or DOJ whether there is some  
19 antitrust issues related to that, but I think it's  
20 something certainly worth pursuing.

21 And the final question that was raised earlier  
22 by Laura was the responsibility of the industry to  
23 educate consumers about third-party charges, and I think  
24 there's no question that the industry has a very  
25 significant obligation, certainly responsibility, to make

1       sure that if their customers, if they're providing this  
2       service to their customers and they believe that their  
3       customers -- that this is a service that is of value to  
4       their customers, that they need to be reaching out to  
5       ensure that their customers are aware that these charges  
6       might appear on their bills.

7               I think partly that is -- and certainly partly  
8       the intent of some of the bill design changes that  
9       companies have made, but I think this is something that  
10      certainly is worth further discussion as to whether there  
11      are other ways to make sure that that information gets  
12      out. And with that, I'll pass it on.

13              MR. SCHOSHINSKI: Thank you, Glenn. Next we're  
14      going to hear from Mike Altschul. And I'm going to get  
15      him set up -- get him set up on his slides here.

16              MR. ALTSCHUL: Thank you, Bob.

17              MR. SCHOSHINSKI: There, that works.

18              MR. ALTSCHUL: Well, thank you for inviting me,  
19      and I hope all of you aren't too sleepy after lunch. The  
20      good news for these presentations is that pretty much all  
21      the ground that Glenn covered applies to wireless  
22      carriers and then some. For those of you who like  
23      aphorisms -- I grew up in a family that loved aphorisms  
24      -- sort of the two organizing thoughts I want to use  
25      today are trust but verify and carrots and sticks.

1                   So, by trust but verify I want to talk about  
2                   what both individual carriers and CTI as their industry  
3                   association do to monitor compliance with a set of  
4                   industry best practices that were established by the  
5                   Mobile Marketing Association. That's a trade association  
6                   -- Jim is going to talk who has been very active in their  
7                   activities over the years -- that developed a set of  
8                   consumer best practices that should apply to mobile  
9                   marketing that rides over wireless carriers' networks.

10                   And then the carriers themselves, as Glenn  
11                   described, also monitor on a daily basis all of their  
12                   calls to their customer care and customer service  
13                   representatives and can -- and the reason they do it so  
14                   they can quickly detect any spikes in any particular  
15                   issue that is causing customers to call customer care.

16                   I don't know what the most recent data is, and  
17                   it's probably proprietary, so it's a good thing I don't  
18                   know it, but a call to a carrier to be handled by a  
19                   customer care representative is like \$7 or \$10 to handle.  
20                   The revenues from premium content are much less than  
21                   that, so a few calls to customer care can erase any  
22                   incentive to carry premium messages very quickly.

23                   So, I'll go on, as I said, in a minute, to talk  
24                   about our processes on monitoring. The carrots and  
25                   sticks approach is that the carriers do enter into

1 contracts with aggregators and their customers for  
2 billing and collection services associated with premium  
3 content. And increasingly the individual carriers have  
4 adopted a model that rewards those marketers that have a  
5 low rate of customer complaints so that if somebody is  
6 not generating complaints to customer care, they will  
7 receive a larger revenue share from the carrier than from  
8 those services that generate more complaints.

9 Additional sticks are actually suspension and  
10 not supporting or carrying programs that result in either  
11 too many complaints on a carrier's network or don't --  
12 are found not to be compliant with the industry best  
13 practices. The focus of what the wireless carriers do,  
14 just to be clear, is on third-party content. It's called  
15 premium messaging oftentimes. It's usually facilitated  
16 through short codes, but it can also now be delivered  
17 through ads and offers that are imbedded within a  
18 wireless application.

19 Those are not true cramming issues because  
20 those charges would not be billed on a carrier bill. But  
21 if the customer has an account at, for example, the Apple  
22 iStore, it would be billed to that account or similar  
23 third-party accounts. There's a -- there are some  
24 similar sort of over-the-top marketing pitches that,  
25 again, don't involve carrier billing in collection, but

1 involve the same kind of charging for customers.

2 And one reason that we're talking about third-  
3 party content for wireless carriers is that from the  
4 beginning of wireless service, because it never had rate  
5 regulation the way the wireline carriers have, for  
6 carrier-provided services, certainly communication  
7 services, such as caller ID or voicemail or three-way  
8 calling, wireless carriers always provided those services  
9 at no additional charge.

10 So, unlike many wireline carriers whose basic  
11 local rates were regulated for residential users at a set  
12 price but these enhance or vertical services were not,  
13 they never developed a practice in the wireless industry  
14 of charging for communication services or services that  
15 were adjacent to communication services. They were  
16 always included in the package that a wireless customer  
17 purchased.

18 And with third-party marketing, it has been  
19 enshrined both in the MMA best practices and in the  
20 carriers' best practices to require pull rather than push  
21 customer consent. What does that mean? It means that  
22 nobody is sending offers to customers either as spam or  
23 signing them up. As a customer, the customer has to  
24 initiate the communication to the content provider using  
25 web address, a quick response code if you're familiar

1 with how you can use the camera in a smartphone to take a  
2 picture of a barcode kind of device, there are multiple  
3 different symbologies in use, or a phone number or any  
4 other ways of initiating communications with the premium  
5 content provider.

6 There then is a requirement for premium content  
7 of double opt-in. So, the first opt-in is the consumer  
8 actually contacting the premium message provider and  
9 saying I want to subscribe to your service. The second  
10 or double opt-in is that the content provider then sends  
11 a message, typically a text message, to the consumer on  
12 their wireless device and says thank you for your  
13 interest in our service, please respond Y for yes or yes  
14 for yes or N for no to confirm that you want to subscribe  
15 to the service. And all of the wireless carriers that  
16 are supporting this kind of messaging require double opt-  
17 in for premium messages. And, again, it's something that  
18 is enshrined in the Mobile Marketing Association's best  
19 practices.

20 Another set of consumer protections that are  
21 included in the Mobile Marketing best practices have been  
22 the subject of some presentations in prior Federal Trade  
23 Commission workshops that involve advertising claims and  
24 full and fair disclosures that are consistent both with  
25 the Federal Trade Commission's advertising practices and

1 a series of consent decrees called AACS for assurance of  
2 voluntary compliance that a number of state AGs have  
3 entered into with wireless carriers in this area.

4 Now, to be sure, the state AGs in seeking these  
5 AACS with the carriers were quick to concede that it's  
6 not the carriers who were doing the deceptive marketing  
7 but rather people that had contracted with the carriers  
8 for communication services. But as the Attorney General  
9 of Florida said when announcing the first of these AACS,  
10 it's very hard to find a lot of these third-party  
11 marketers. It's not hard for us to find AT&T and  
12 Verizon, the other major carriers. So, the wireless  
13 carriers, pursuant to these AACS, have entered into  
14 agreements that are legally binding to actually police  
15 the marketing conduct of those content providers that  
16 they are supporting through the wireless carrier's  
17 billing system.

18 So, along those lines, I have three quick  
19 slides that I'm sure will be available on the website. I  
20 don't have to go over in great detail now, that describes  
21 the monitoring program which CTI runs on behalf of the  
22 wireless industry. And we've now been doing this for a  
23 number of years by contracting with third-party firms.  
24 CTIA through an agreement, a contract, with NeuStar runs  
25 the registry for common short codes. And that's just the

1 short address that's used instead of an internet access  
2 for sending messages, text messages, from phones to  
3 content providers and others.

4 We use that registry to collect information  
5 about the intended use and the type of the campaign  
6 associated with the short code. So, before an address is  
7 assigned for premium messaging or standard rate messaging  
8 for that matter, we basically get a profile and  
9 representations from the content provider describing the  
10 intended use and purpose of their code. This becomes  
11 very valuable, of course, for carriers if they do receive  
12 any complaints or questions through their customer care  
13 representatives, so they will know that this particular  
14 address is associated with baseball scores from your  
15 favorite home team or your horoscope or whatever.

16 We then, as I said, contract with a monitoring  
17 firm that has internet spiders, they monitor cable and  
18 broadcast TV stations to see any references to the use of  
19 these short code addresses and then review the claims,  
20 whether it's for a free ringtone that may or may not be  
21 free or content which may not conform to the content  
22 guidelines of the MMA and MMA carriers have established,  
23 its not being suitable for a particular age or audience  
24 or the like.

25 The monitoring doesn't stop there. The

1 monitoring company also subscribes to each and every  
2 short code and sends test messages to each code and goes  
3 through the key requirements of the best practices, so if  
4 they text "help," they want to see if they get a response  
5 to the word "help." If they text "stop," they want to  
6 see if the subscription or the messaging stops and the  
7 like.

8 And, so, that's the verify part of the trust.  
9 When -- so, this is talking about how we intercept. I  
10 got a little bit ahead of here.

11 And then this last slide, which probably  
12 violates every rule of PowerPoint presentations. Way too  
13 many words and way too small boxes. It shows the steps  
14 if we do detect violations, first of all, we share it  
15 with the participating carriers. To Glenn's point, we  
16 are guided by the antitrust divisions, business review  
17 letters to some credit rating agencies, quite a few years  
18 ago, that suggest it is perfectly acceptable and good for  
19 consumers under the antitrust laws to share information  
20 about consumer practices or bad practices. But we insist  
21 that the carriers make their own independent decisions  
22 about what to do with any particular program that is  
23 found in violation. There's not going to be any  
24 discussion or collusion among carriers to support or not  
25 support a particular code.

1                   For those programs that we do detect  
2                   violations, we, of course inform them immediately. And  
3                   depending on the severity, there's a clock of so many  
4                   hours or so many days to come into compliance with the  
5                   best practices. At that point, we retest, and if the  
6                   program is in compliance, the sort of red flag is  
7                   removed. If it's not, CTIA through NeuStar can use the  
8                   registry process to deny access to that campaign and  
9                   those marketers to get additional codes or to renew their  
10                  own codes. We can't take the codes away. Again, it's up  
11                  to the carriers to make those determinations, but we  
12                  certainly can deny access to anyone who's been found not  
13                  to be in compliance or come back into compliance.

14                  I wanted to -- my time is up, but like Glenn,  
15                  I'm going to run over just a little bit. Talk a little  
16                  bit about the carrot and stick part, and I know Bob has  
17                  some questions for us down the road. But one of the  
18                  things that the carriers, as I said, have done is use  
19                  their window through the customer care calls to be able  
20                  to keep a running tally on sort of the pulse of what's  
21                  going on.

22                  And there's, at least in our industry, a  
23                  somewhat notorious lawsuit or set of lawsuits against a  
24                  company called Jawa, J A W A, based in Phoenix, Arizona,  
25                  named after a Star War critter, that both the Texas AG

1 sued in Austin, Texas, and Verizon has sued in Phoenix.  
2 Jawa has vigorously asserted in its defense counterclaims  
3 and asserted that they are not what they're accused of  
4 being.

5 But in that lawsuit, in the public record, it's  
6 quite clear that they were at least one content provider  
7 that paid very, very close attention to the monitoring of  
8 customer care calls and actually would almost on a  
9 dynamic basis change the landing pages for different  
10 short codes and different campaigns in order to keep the  
11 complaint rate just below the threshold that would  
12 trigger penalties.

13 When that was discovered by Verizon, first they  
14 took steps to inform consumers and reviewed the charges  
15 on the consumer bills for these campaigns, set up a  
16 website where consumers could go to claim refunds and  
17 then worked with the state AGs and on their own to bring  
18 an enforcement action. State AGs have been very active  
19 in this area and, as I said, the carriers have also been  
20 active and in appropriate situations have not been afraid  
21 to bring their own enforcement actions.

22 So, that's a quick review. Just to emphasize  
23 one more thing that Glenn said, our carriers like  
24 wireline carriers had a learning experience with the  
25 first round of services, premium services, that they

1 provided, where if somebody called a wireless carrier to  
2 complain about a charge on their bill from a third-party,  
3 depending on the carrier, the caller, it might have been  
4 said, well -- might have been directed to the third-party  
5 content provider. That did not work very well. That was  
6 actually a very unhappy experience all around.

7 So, all of the carriers now have adopted what  
8 they call one-and-done. One call to the carrier's  
9 customer service rep, the charge is removed from the  
10 customer's bill, again, sort of the one-bite rule, no  
11 questions asked, and the carrier takes it from there and  
12 deals with the third-party content provider. And that  
13 has been the practice at least for a couple of years now  
14 in the wireless industry.

15 So, thank you and look forward to your  
16 questions.

17 MR. SCHOSHINSKI: Thank you very much, Mike.  
18 And now we're going to hear from Jim Manis from the  
19 Mobile Giving Foundation.

20 MR. MANIS: And being third when that time gets  
21 crept up, I guess I step back a little bit, which is  
22 fine. So, let me try to cover a few things quickly and  
23 then leave time for Q&A, which I think will be beneficial  
24 and helpful.

25 I'm here really for three relevant reasons.

1 One is, as Bob indicated, I was on the founding team of a  
2 company called m-Qube. m-Qube was one of those early  
3 aggregators in this space for wireless direct consumer  
4 content. So, when we began in 2001, there wasn't even  
5 interoperability for short codes. So, our investors like  
6 Bank Capital again bet on the fact that direct consumer  
7 access to content was something that would be beneficial  
8 over the long term.

9 Secondly, I rebooted the Mobile Marketing  
10 Association in 2003. I say reboot because it actually  
11 began back in the late '90s, but when the economy  
12 collapsed, it did, too. We rebooted early in 2003 with  
13 about 13 members. It's grown significantly since then  
14 and has become a global organization.

15 At one point, the driving force for that growth  
16 really, I think, was the experience the industry had in  
17 late 2004, in fact, between Christmas and New Year's when  
18 a party -- a European party came and advertised in the  
19 States for free ringtones and it ended up placing a  
20 significant amount of premium charges on phone bills,  
21 which led us in March of 2005 to, through the MMA, launch  
22 a consumer best practices initiative.

23 That consumer best practices initiative was  
24 comprised of various constituent groups within the mobile  
25 industry, wireless operators, content providers,

1 aggregators, some other technology providers, to better  
2 understand each other's business model and focus on what  
3 long-term sustainability meant with respect to consumer  
4 trust. So, the issues and the items that Mike had called  
5 out with respect to double opt-in, clear and conspicuous  
6 consent, those all emerged out of the MMA CBP processes,  
7 we refer to that.

8 Those consumer best practices are -- it's a  
9 very dynamic document which changes and grows two times a  
10 year based on industry input. And when I say industry in  
11 this case, we and MMA actively seeks input by all  
12 parties, including regulators, in terms of what's best to  
13 put into this document and how best to maintain consumer  
14 trust and integrity.

15 And I think those documents, that CBP, has been  
16 memorialized through carrier contracts, as Mike had  
17 indicated, with aggregators and other parties. So,  
18 that's become the measure with respect to standards or  
19 best practices, against which CTI's monitoring and  
20 enforcement activities take place.

21 We're big supporters of carrier and CTA  
22 monitoring. We're bigger supporters of enforcement. We  
23 think that it's a good business to be in as long as  
24 conditions of trust are retained and argue that that type  
25 of monitoring and enforcement needs to be done a common

1 basis, not on an individual carrier basis and applied  
2 common across the industry. And by doing that, it's a  
3 better utilization of resources and skills and talent.

4 Those experiences helped provide some  
5 background with -- by launching the Mobile Giving  
6 Foundation at the end of 2007. Now, monitoring and  
7 enforcement are there for lots of reasons, one of which  
8 is that in the commercial space, a premium event --  
9 again, we'll use pre-MSS as a billing mechanism in this  
10 case, but a premium event in the commercial space can  
11 actually be placed on a carrier bill by that third-party  
12 content provider. So, the lawsuit that Mike referenced  
13 is a company removed from the carrier. This is not the  
14 carrier. This is not really the aggregator involved.  
15 This is a content provider, it has the ability to place a  
16 transaction or a premium on the carrier bill of the  
17 subscriber.

18 When we launched the Mobile Giving Foundation,  
19 while we're supporters of all of this, we knew that our  
20 request to the wireless operators to support mobile  
21 philanthropy as a new channel on a no-cost basis had zero  
22 tolerance for these types of errors. And it was our  
23 intent to establish something that was based purely on  
24 trust and integrity and, therefore, we eliminated the  
25 ability of a charity, in this case that third-party

1 content provider, to initiate a donation.

2 So, we took steps specifically that redesigned  
3 the commercial direct consumer space by regaining control  
4 over the opt-in and the billing and placed that on our  
5 platform as an enabler, not as a fundraiser, but as an  
6 enabler to other parties who use the Mobile Giving  
7 channel for both donor acquisition, fundraising, and  
8 donor engagement, which are the three attributes that  
9 wireless brings to them, which allows the charities to  
10 access new donors, which is critical for them.

11 In our society, obviously, we've relied upon  
12 older donors to write bigger checks. The thing that's  
13 changing that mobile is helping to create is a new  
14 demographic, a younger demographic that writes a smaller  
15 check. And over the long period of time, that is a  
16 terrific service that the wireless industry can provide,  
17 just simply by virtue of who uses a technology like text-  
18 to-give engagement.

19 But I want to emphasize that in mobile giving  
20 there's a huge change. It is not the content provider  
21 that places a premium event on the bill. It is actually  
22 in this case, programs through us, it is the Mobile  
23 Giving Foundation. So, if a cramming event occurs, you  
24 don't have to go investigate too far because you know  
25 that it's with us, right? A donor will reply similarly

1 to the outline that Mike provided, using a key word to a  
2 short code and a campaign is affiliated with a particular  
3 price point, a \$5 price point or a \$10 price point, and  
4 the donation itself is transaction-based as opposed to a  
5 subscription model.

6 Our platform captures information like the  
7 phone number so we can tie a donation to a specific  
8 number and we can tie that donation back to a specific  
9 charity. So, trust and security for the Mobile Giving  
10 Foundation is really to prevent that type of cramming, to  
11 prevent fraud, and to also do one additional thing that  
12 is critical when we move from commercial to  
13 philanthropic, and that is to be able to have end-to-end  
14 insight, oversight, over the approval of a charity and  
15 the actual remittance of that donation to that specific  
16 charity.

17 So, again, a difference in commercial to  
18 philanthropy, if you buy a ringtone or if you buy a  
19 product, there's a natural feedback loop through the  
20 consumer when their -- when they have a -- if they didn't  
21 receive the product or if they have a complaint about the  
22 product. If you give a donation, that natural feedback  
23 loop disappears.

24 So, we believe it's critically important to not  
25 place that function outside into the commercial space but

1 keeping it within a 501(c)3 so at the end of the day the  
2 Mobile Giving Foundation can track and actually make sure  
3 that that dollar goes to the recipient charity, right?  
4 That closes that loop in our view that exists when you  
5 take a natural product out.

6 So, those items which are -- which place  
7 control into the hands of the consumer, the donor, are  
8 extremely important. The conspicuous and clear advise  
9 and consent of the donor, of the subscriber, of the  
10 consumer is absolutely critical. Those features that  
11 allow them to -- that require a double opt-in for  
12 engagement are mandatory and allows them to break that  
13 engagement at their -- at their desire. It's critically  
14 important. And I think it reflects itself through the  
15 MGF at least through, for example, our refund rates,  
16 which today are below a half of 1 percent, which is  
17 dramatically lower than what you would see in any other  
18 part of the channel.

19 And, frankly, it should be less than that, but  
20 we're learning some lessons, including the fact that like  
21 in the commercial space, the apparent travel relationship  
22 is important and rather -- when a donation occurs  
23 mistakenly by a child, oftentimes the parent will want  
24 that money back as opposed to asking the child to go  
25 perform a chore and thanking them for making and

1 supporting Japan relief efforts, for example.

2 But those are interesting things that we learn.  
3 We're very thankful for the wireless operators for  
4 enabling this on a no-cost basis. We think that's  
5 fantastic. We think that what CTA is doing in the  
6 commercial space on monitoring and enforcement is very  
7 supportive of overall growth in mobile giving. And we  
8 hope that mobile philanthropy will be a deeper engagement  
9 for social action overall, so thank you very much.

10 MR. SCHOSHINSKI: Thank you, Jim.

11 I had a couple of questions I wanted to ask the  
12 panel, and then we're going to open the questions to the  
13 audience for anything, any questions anyone may have.

14 My first question is I sort of conceptualize  
15 the mobile platform as the younger sibling of the  
16 landline platform, and so my question to Mike and Jim is  
17 when your platform was developing and you were  
18 considering guidelines and so forth, did you look at the  
19 successes and the failures of the landline platform and  
20 third-party billing to sort of guide you in what you were  
21 doing.

22 MR. ALTSCHUL: Well, certainly the DNA of the  
23 wireless industry, you know, is directly descended from  
24 the wireline industry, and many of the practices and  
25 certainly the billing platforms are the same. But for a

1 number of reasons which are no longer the case this case  
2 of mobile marketing and premium messaging took off  
3 elsewhere, particularly in Europe ahead of the United  
4 States. And there were some very unpleasant consumer  
5 experiences in those markets.

6 So, sometimes not being first can be  
7 advantageous. And we were able to learn both from the  
8 wireline experience but especially from the wireless  
9 experience and those markets that were a bit ahead of the  
10 United States and avoid some of the mistakes they had  
11 made with setting up systems that didn't have the kind of  
12 monitoring and compliance and best practices that we  
13 adopted.

14 MR. MANIS: And I'd add one more thing. This  
15 is not just learning from experiences in landline and  
16 previous experiences in other parts of the world, but  
17 also wanting to make sure that the consumer engaged in  
18 using mobile was not reflective of things that we saw in  
19 the online space. So, you know, e-mail marketing and  
20 online distribution were of great concern for us, and we  
21 wanted to make sure that that mobile engagement was more  
22 trusted.

23 MR. SCHOSHINSKI: And, Glenn, my question to  
24 you as the older sibling in this relationship, has your  
25 industry looked at what mobile is doing and seen anything

1 that you think is useful to imitate or solutions that you  
2 think are working or are not working in that space.

3 MR. REYNOLDS: Yeah, I mean, I think that  
4 there's two parts to that answer. I think that where  
5 technologically it's feasible you see those types of  
6 things. For example, I mentioned earlier that some of  
7 the companies, to the extent that they're the ISP on the  
8 broadband platform, you see similar types of double-click  
9 options that are used on internet-based sales as would be  
10 used on your mobile phone.

11 On the sort of traditional analog platform,  
12 it's a lot more difficult because of the technological  
13 limitations to be able to do those types of things in  
14 real time. And that's where I think the real limitation  
15 is, it's the realtime checks. There are lots of things  
16 you can do before the fact, after the fact, but the  
17 difference between, I think, the traditional fee STN  
18 versus wireless or the broadband is the ability to do  
19 some of those things in real time.

20 MR. SCHOSHINSKI: Jim, I had a question  
21 particularly about the role of the aggregators on each of  
22 these platforms, and it seems to me you have the most  
23 experience, at least on the mobile platform. Is it a  
24 different role for a billing aggregator on the mobile  
25 platform than it is on the landline platform?

1                   MR. MANIS: I can't really talk to the  
2 differences, but the -- I think, as it's been alluded to,  
3 there's been a kind of an evolution of those roles over a  
4 period of time. I think originally the mobile  
5 aggregators definitely viewed that they would have kind  
6 of enhanced responsibilities to police and monitor the  
7 systems and the programs that they were running, that  
8 were running through the platforms.

9                   I think that at some point that became  
10 separated and they simply became a processing company.  
11 And I think that was -- I believe that's a bit  
12 problematic. I think that they have a responsibility,  
13 they do by contract, but by function in the marketplace  
14 that those functions get dispersed.

15                  MR. SCHOSHINSKI: Do mobile aggregators have  
16 roles beyond billing? I mean, is there a transmission  
17 role for the mobile aggregators, they're actually  
18 providing services over the network for the mobile  
19 aggregator?

20                  MR. MANIS: They do. They're responsible, they  
21 have messaging -- routing engines, they do billing  
22 engines, so they have -- and oftentimes they'll have kind  
23 of campaign management responsibilities. There's no one  
24 aggregator that really looks the same. Each  
25 distinguishes their services, if you will, based on the

1 competitive situation of the marketplace. But, yeah,  
2 they provide a wide range of responsibilities and  
3 functions in the market.

4 MR. SCHOSHINSKI: Glenn, you mentioned some of  
5 the auditing that your members are doing. Can you  
6 describe -- I mean, you mentioned auditing both of the  
7 aggregators and of the merchants. Can you just sort of  
8 describe -- I know you can't speak for every one of your  
9 members, but just in general how that works?

10 MR. REYNOLDS: Yeah, well, I think that there's  
11 two levels obviously and I'll point out we have different  
12 companies who have taken different approaches here. But  
13 I think the auditing of the service providers is  
14 typically dealt with and typically given the primary  
15 responsibility to the billing aggregators, through the  
16 contractual relationships from the telephone company and  
17 the billing aggregator.

18 Those need to be ongoing; those obviously big  
19 companies giving information to the billing aggregators  
20 about the complaints it's receiving. The billing  
21 aggregator has a responsibility for following those  
22 complaints. The billing aggregator has the obligation  
23 for determining -- you know, for suspending sub-kicks or  
24 for terminating sub-kicks.

25 But then on top of that, sort of the second

1 layer, is obviously a part -- and there's an obligation  
2 to follow and make sure that the billing aggregator is  
3 doing what it agreed to do in the contractual  
4 relationship. And, so, I know some of the companies have  
5 contractually provided for third-party auditing  
6 companies, well known third-party auditing companies to  
7 do contract audits to make sure that the billing  
8 aggregators are, in fact, doing what they've committed to  
9 do in those contracts.

10 MR. SCHOSHINSKI: And can you give us some  
11 examples of what they look for in those audits, what kind  
12 of information they're auditing?

13 MR. REYNOLDS: I think they're auditing the  
14 practices such as when we talked about, for example, at  
15 the front end the companies are obligated to -- the  
16 aggregators are obligated to get information about the  
17 service providers as to what the company's providing,  
18 whether there's a real product there, whether they've set  
19 up 800 numbers, and auditing -- making sure that the  
20 applications include real information about the ownership  
21 of these companies, comparing ownership with other  
22 companies to see whether they're doing some of the  
23 schemes that have identified before.

24 Those are the key -- you know, so those  
25 obligations are part of what the aggregators should be

1 committing to do as part of the contract and the  
2 aggregator -- the auditors of the aggregators are making  
3 sure that the aggregators are, in fact, have processes in  
4 place and are following those processes.

5 MR. SCHOSHINSKI: And, Mike and Jim, can you  
6 talk about -- you mentioned sort of the auditing that  
7 goes on both at the CTIA and through the MMA guidelines.  
8 Can you talk a little bit about what that involves, what  
9 gets done there?

10 MR. ALTSCHUL: Well, as I said, probably every  
11 campaign at the registry has to identify the information  
12 which the industry needs and our outside auditors need to  
13 monitor that campaign. And we turn over the code to the  
14 auditors who, at least on a monthly basis, will interact  
15 with the short code to make sure that it's fully  
16 compliant both with the MMA best practices and with the  
17 descriptions that it provided to the carriers when it  
18 obtained the short code number in the registry.

19 The other piece of it is that when violations  
20 are detected, and they're detected quite regularly,  
21 unfortunately, the information is passed through the  
22 aggregator and often the content provider and given the  
23 severity of the violation -- and the severity of the  
24 violation is really dictated by the effect to the  
25 customers -- there is a period to cure before that code

1 is in jeopardy of being shut off.

2 MR. MANIS: The monitoring today is done by  
3 individual carriers, oftentimes to the MMA, plus, plus,  
4 right? So, it's the MMA, CDPs, plus whatever unique  
5 feature the carrier would like to audit in addition.  
6 There -- not all those auditors -- not all of the -- the  
7 audit function will vary from carrier to carrier. I  
8 think what Mike is talking about is something that was  
9 welcomed within the industry because it will consolidate  
10 those independent audits.

11 Audits look at message flow, and audits look at  
12 how that called action is made in the marketplace and  
13 billed around correct advertising and promotion. While I  
14 agree that there are a number of violations that are  
15 found on any given day, but I would not -- I would  
16 caution you that those violations are very minor in most  
17 situations. I don't have the numbers in front of me  
18 today that are current, but my guess is probably 95  
19 percent of those violations are because one word got  
20 tweaked based on a changing standard. And it does not  
21 address the significant situation at all, but yet it gets  
22 flagged because the language is different -- the language  
23 changed this month versus last month.

24 So, we do not have a significant problem, but  
25 where the problem exists, it usually is significant,

1 i.e., the case down in Arizona.

2 MR. SCHOSHINSKI: Does the auditing include  
3 monitoring compliance chargebacks, other statistics?

4 MR. ALTSCHUL: That's done by individual  
5 carriers, but all of them are very aggressive in looking  
6 at that data.

7 MR. MANIS: Each aggregator gets scored based  
8 on those types of metrics. And as to Mike's carrot-and-  
9 stick approach, the individual carrier will score an  
10 aggregator based on the performance of their content  
11 providers, okay? Again, I want to make sure that I  
12 separate this from the MGF. This is a discussion around  
13 commercial aggregators, so -- and it's based on that  
14 score based upon the individual carrier that will  
15 determine, for example, additional costs. Moving to a  
16 consolidated approach is a good thing in the industry.

17 MR. SCHOSHINSKI: And other examples where a  
18 carrier will drop an aggregator based on a low score?

19 MR. MANIS: There are examples where carriers  
20 will drop individual programs. There's examples where  
21 carriers may not agree on which individual programs will  
22 -- to drop. And there's examples where carriers will  
23 penalize aggregators, including non-contract renewals,  
24 yes.

25 MR. SCHOSHINSKI: And when you say penalize, is

1 that a financial penalty or something else?

2 MR. MANIS: It certainly translates to a  
3 financial penalty.

4 MR. SCHOSHINSKI: Okay, we don't have a lot of  
5 time, so I'd like to open it up for questions. And if  
6 you would get -- we'll have the microphone sent over to  
7 you and say your question in the microphone and identify  
8 yourself before you ask your question.

9 MR. BUNTROCK: I'm Ross Buntrock with Arent  
10 Fox. I actually represented the MMA in the California  
11 third-party billing proceeding. My question is this: I  
12 think a lot of MMA members would acknowledge that the  
13 premium -- the premium SMS models is going the way of the  
14 dinosaur pretty quickly. Any my question to the panel is  
15 as the concern becomes more about application-based  
16 cramming, as articulated by Senator Klobuchar and others,  
17 is the MMA guidelines -- are they flexible enough and is  
18 the CTIA's auditing procedures applicable -- I guess my  
19 question is how are we going to make the leap to the next  
20 generation beyond premium SMS as it regards this issue.

21 MR. ALTSCHUL: CTIA's members certainly believe  
22 that the MMA guidelines are appropriate to all of the new  
23 in-app marketing and something called long codes, which  
24 are basically a view-IP 10-digit phone number that don't  
25 necessarily go through the same carrier vetting process,

1 just don't go through the carrier vetting process that  
2 common short codes do.

3 It gets more and more complicated when the  
4 billing is not on the carrier's platform for the carrier  
5 to be able to detect through spikes and calls to customer  
6 care and the like, consumer complaints. But we are at  
7 CTIA undertaking an initiative to develop a set of best  
8 practices for wireless application developers and  
9 wireless applications that would include incorporating  
10 these consumer protection guidelines. And while no one  
11 can tell -- you know, can require an app store, app  
12 developer to follow it, certainly consumers who are  
13 interested in using applications that are trustworthy can  
14 look for a mark or some other seal that would indicate  
15 that the app provider follows industry best practices.

16 MR. SCHOSHINSKI: Okay, any other questions?

17 MR. WOLFE: Just real quick, because it's  
18 actually the microphone. This is Doug Wolfe from the  
19 FTC. This is a question for Mike. What exactly is  
20 captured in the message flow interception and how does --  
21 for somebody who's not technically knowledgeable about  
22 this, how does that relate to the question that was just  
23 asked?

24 MR. ALTSCHUL: Well, the current monitoring is  
25 the kind of premium content that customers subscribe to

1 using text messaging. So, when you opt in, you'll get a  
2 response from the content provider; it will advise the  
3 customer of the charges, if any, or if standard message  
4 rates apply; the frequency of the service, how many times  
5 a day you'll get ball scores or horoscope or the like;  
6 information, where to go for help; and instructions to --  
7 how to subscribe by responding with yes or no or help or  
8 whatever.

9 The monitoring that's conducted by the industry  
10 actually monitors for those critical elements in the  
11 return message to make sure that every consumer gets each  
12 and every one of those instructions that have been  
13 identified as the information customers need to  
14 understand what they're subscribing to.

15 The content monitoring is different. That's  
16 the monitoring of internet websites and late-night cable  
17 TV show ads and things like that to make sure that the  
18 short code is being used in the way that carriers  
19 understood it was to be used.

20 But the message flow is actually if you text  
21 help to a short code, do you get information back  
22 answering your question; if you text stop, does the  
23 subscription and the billing stop.

24 UNIDENTIFIED SPEAKER: Is part of what's  
25 captured the actual -- some piece of digital evidence, if

1           you will, that --

2                   MR. ALTSCHUL:   Screen shots.

3                   UNIDENTIFIED SPEAKER:  -- message --

4                   MR. ALTSCHUL:   Our monitoring captures the  
5           screen shots.

6                   MR. SCHOSHINSKI:  We have time for one more  
7           question.

8                   MR. ALTSCHUL:   I actually have a monitoring  
9           report if you're interested to show you afterwards.

10                   MR. ZIMMERN:   This is Christian Zimmern from  
11           the Mobile Giving Foundation.  Actually, the messages are  
12           actually stored at the aggregator and the carrier level  
13           so you could actually do look-ups on a phone number basis  
14           for every single message sent to a phone number.  So, the  
15           data is there; you just need to know where to look.

16                   MR. SCHOSHINSKI:  Great.  Well, I want to thank  
17           Mike, Jim, and Glenn for participating.  I think it's  
18           been very informative and helpful.  And I'd like to give  
19           them a round of applause.

20                   **(Applause).**

21                   MR. SCHOSHINSKI:  We will be back at 2:45 for  
22           the next panel.  If you had questions for this panel and  
23           weren't able to get it, feel free to submit a comment  
24           card, and we'll see if we can get you an answer.

25                   **(Recess).**

1           **SESSION 4: POTENTIAL SOLUTIONS TO THE CRAMMING PROBLEM**

2           MS. GREISMAN: I am going to ask everybody to  
3 take a seat, please.

4           Okay, let's get started. Good afternoon,  
5 everybody. My name is Lois Greisman. I'm with the  
6 Division of Marketing Practices at the Federal Trade  
7 Commission. Good to see you all here. We are in the  
8 home stretch. This is the last panel. It will be  
9 followed directly by remarks from Deputy Director Chuck  
10 Harwood.

11           I'll be going with the disclaimer. The views  
12 that I express are my own, not those of the Commission or  
13 any individual Commissioner. So, perhaps there are some  
14 out there who are English majors or theater buffs, and  
15 you might be familiar with a famous first line in a play,  
16 Samuel Beckett's play, Waiting for Godot, in which  
17 Estragon turns to Vladimir and says, "Nothing to be  
18 done." Well, we could discuss the philosophical,  
19 political, moral implications of that line and of that  
20 entire play, and that would be a lot of fun. But that's  
21 not what we're here to do this afternoon.

22           In fact, I would entitle this panel, "Something  
23 to be done." If we've heard nothing else for the last  
24 several hours, we've heard loud and clear that there is a  
25 problem out there. And we've already heard a fair amount

1 about some possible solutions, some possible approaches  
2 to tackling what is a significant consumer protection  
3 problem. And we have the benefit this afternoon of a  
4 panel of experts who will probe some of those issues more  
5 closely.

6 I'm going to introduce them briefly and turn it  
7 over to them in just a couple of minutes. First, Erik  
8 Jones, who is counsel to the Senate Commerce Committee on  
9 Commerce, Science, and Technology. Elliot Burg is on the  
10 phone. Elliot, can you hear us?

11 MR. BURG: Yes, Lois, I can hear you just fine.

12 MS. GREISMAN: Good. He is a Senior Assistant  
13 Attorney General in Vermont. Keith Vanden Dooren,  
14 Special Counsel in the Florida Office of the Attorney  
15 General. Joel Gurin, Chief of the Consumer and  
16 Governmental Affairs Bureau at the FCC. And last but not  
17 least, John Breyault, Vice President of Public Policy,  
18 Telecommunications and Fraud, at the National Consumers  
19 League.

20 Let me make a couple of points clear. Our goal  
21 is not to reach consensus. Our goal is to explore the  
22 options, explore possible solutions and tease out pros  
23 and cons for each of them within our window of time.

24 I'm going to take the lead on providing a  
25 little bit of information from some of our state law

1 enforcement colleagues, who simply were not able to be  
2 with us this afternoon. Briefly, I spoke with Jim  
3 DePriest from the Arkansas Attorney General's Office.  
4 His office has been working directly with LECs so that  
5 each would provide a free third-party billing block,  
6 which would be available upon request. He said this is  
7 modeled off of an agreement from July of 2009 that  
8 Connecticut entered into with the LECs in which they  
9 agreed to -- excuse me -- that agreement was with AT&T,  
10 in which AT&T agreed to block all third-party charges at  
11 the consumer's request. The proposal in Arkansas, as was  
12 the case in Connecticut, would be limited to landlines.

13 Second, from California, Denise Mann in the  
14 Public Utilities Commission, has been working on a bill  
15 that is pending in the legislature, SB905, that would  
16 require the LECs to report the cramming complaints that  
17 they receive directly to the Public Utility Commission.  
18 Now, that reporting requirement only extends to  
19 aggregators. That bill would cover both wirelines and  
20 wireless complaints.

21 So, with that as part of our backdrop, I'm now  
22 going to ask Erik to give us some historical perspective.

23 MR. JONES: As Lois said, my name is Erik  
24 Jones, and I'm Counsel for the Senate Commerce Committee,  
25 which is chaired by Senator Rockefeller. And first I

1 just want to thank the FTC for holding this forum today.  
2 I know that Senator Rockefeller very much appreciates the  
3 FTC's effort to bring increased attention to this  
4 problem.

5 As many of you know, the Senate Commerce  
6 Committee has been doing an investigation into cramming  
7 for almost a year, and we find it be a significant  
8 problem, which Senator Rockefeller has said on a number  
9 of occasions publicly. And as Lois said, this is the  
10 solutions panel, and we -- because the Committee is still  
11 conducting its investigation, Senator Rockefeller hasn't  
12 adopted any specific solutions at this point in time, but  
13 I think Senator Rockefeller would agree that, as Lois  
14 said that, you know, something does need to be done.  
15 And, so, we're certainly in agreement on that. And  
16 Senator Rockefeller will be focused on this very closely  
17 in the coming months to do something about it.

18 Now, before I explain sort of what I can share  
19 about the Committee's investigation, I think it would be  
20 helpful if I just explained how the Committee came to  
21 investigate cramming. And it's probably helpful to  
22 explain what Senator Rockefeller's been doing since he  
23 became chairman of the Committee.

24 In 2009, Senator Rockefeller decided to  
25 establish an office of oversight investigations for the

1 Committee. And he did that because the Senate Commerce  
2 Committee has very important jurisdiction over important  
3 aspects of the American economy. And we also have  
4 jurisdiction over the FCC and the FTC, which are  
5 important consumer protection agencies and are partners  
6 with the Committee in combating abusive practices.

7 So, one of the first investigations that the  
8 Committee undertook once Senator Rockefeller became the  
9 chairman to combat an abusive practice was this -- was a  
10 practice where a number of companies were using an  
11 abusive online marketing practice to enroll consumers in  
12 discount programs that they weren't aware they had become  
13 enrolled in.

14 And what we found through this investigation  
15 was that millions of consumers were enrolled and millions  
16 of consumers were charged \$10 to \$15 on a monthly basis.  
17 Now, that might seem to be a very small amount, but over  
18 time, especially if a consumer doesn't catch it, that  
19 adds up, and it adds up very quickly. And if a company  
20 can get away with charging, let's say, millions of  
21 customers or consumers this \$10 to \$15 charge, very  
22 quickly it becomes a billion-dollar problem.

23 And, so, we found that to be a -- when we  
24 looked at the problem initially, we didn't know how bad  
25 it was going to be, and actually we were shocked that it

1 was a billion-dollar problem. And we eventually passed  
2 legislation to fix it. But once we were finishing that  
3 investigation, we took a look around and tried to find  
4 other areas that needed to be addressed. And one of  
5 those we quickly saw, and this was last year, was the  
6 issue of cramming. And it presents similar problems, and  
7 it's a similar scenario that we saw in this other  
8 investigation we investigated about the online marketing  
9 practices.

10 Consumers have been complaining for years that  
11 they are getting \$10 to \$15 worth of unauthorized charges  
12 on their telephone bills on a monthly basis. And what we  
13 saw when we were taking a look around, we saw that the  
14 FTC had brought a case against a company for doing this  
15 and that it resulted in millions of dollars in consumer  
16 redress. We've seen state attorney generals do the same  
17 thing over a period of time. And we decided to open up  
18 this investigation because what we see, we're trying to  
19 determine whether there's a similar problem on the  
20 telephone side where, you know, because there are so many  
21 landline telephone bills out there, if only a percentage  
22 of them are being crammed on a monthly basis, that  
23 quickly could become a billion-dollar problem just like  
24 what we saw in our last investigation.

25 So, that is -- that was what got us into

1           cramming in the first place. Chairman Rockefeller is  
2           doing -- going to be doing everything he can to combat  
3           unauthorized charges, whether it's on a credit card,  
4           telephone bill, whatever it is, he's going after it. And  
5           the important point that I want to make is that when we  
6           see these cases that have been brought produce striking  
7           evidence of fraud and what we are going -- what we are  
8           doing and what we are using our investigatory tools to do  
9           is we're taking a look and trying to determine if these  
10          instances that have been appearing are just rare  
11          occurrences from these cases or if there is, in fact, a  
12          pervasive problem of fraud on the third-party billing  
13          system that's being offered by telephone companies.

14                         And that is essentially what our office does,  
15          the Office of Oversight Investigations. We accumulate  
16          information, and then we share that information with the  
17          members of our committee. We're not law enforcement.  
18          We're not trying to prove a criminal case. We're just  
19          trying to gather information so that the Committee can  
20          better understand a problem in order to provide a  
21          solution.

22                         And the reason why we did not start with, let's  
23          say, a solution and just introduce a bill on the outset  
24          is we wanted to understand the scope of this problem and  
25          really get a handle on it before we tried to -- before we

1       tried to tackle it. Now we've spent the better part of a  
2       year on this -- I mean almost a year, and Senator  
3       Rockefeller just announced today that in the coming  
4       months we will be doing a hearing and issuing a staff  
5       report on that.

6                So, at this point, I can't get into detail, but  
7       I can provide a little bit and sort of explain what we're  
8       seeing, without going into detail of what -- the  
9       information we received. The investigation was opened in  
10      June of 2010, and we started with writing letters to  
11      three of the largest telephone companies. And we started  
12      there because in Senator Rockefeller's mind, in our mind,  
13      if you want to solve the cramming problem, you really  
14      need to talk to the telephone companies, because they're  
15      the entities that are allowing the charges to be placed  
16      on their customers' bills.

17               And we used that -- the information that we  
18      asked for, which we've been going through and we have  
19      been using, an important piece of that was we asked for  
20      all the companies that are billing on telephone bills,  
21      just provide us a list. And we went through that list.  
22      And through the fall of last year, these were -- there  
23      were thousands of them -- we spent a lot of time getting  
24      on the internet and just actually doing Google searches  
25      and doing Better Business Bureau searches and trying to

1 understand who are these companies.

2 And we quickly realized that a lot of these  
3 companies are -- appear to be bad actors. They had a lot  
4 of complaints; they had bad ratings from the Better  
5 Business Bureau. You take a look at their websites, they  
6 do not look like the kinds of legitimate companies you  
7 would expect to find where customers are actually paying  
8 for the services. And what we did, we -- from there, we  
9 sent letters to a number of the third-party companies  
10 that were billing. And we're trying to understand sort  
11 of their practices, as well.

12 So, since then, we've spoken to auditors who  
13 make their living off of taking unauthorized charges off  
14 of phone bills. We've spoken to presidents of these  
15 companies that are offering -- that place charges on  
16 phone bills. We've spoken to the phone companies.

17 And based upon all of this, what we are seeing,  
18 and Senator Rockefeller has just released a letter where  
19 he says this, but we're seeing that cramming is a  
20 pervasive problem on the third-party billing system. It  
21 appears to be rife with fraud. And we -- and that is  
22 because it appears that the telephone companies have been  
23 too willing to place third-party charges on their  
24 customers' bills without first determining whether or not  
25 those charges are, in fact, authorized.

1                   So, that is the -- because of that, we've  
2                   shared all of our evidence with Senator Rockefeller, he  
3                   came to the same conclusion. That's why he has announced  
4                   that he's going to be doing a hearing and releasing a  
5                   staff report at some point in time.

6                   And, you know, I just want to point out, too,  
7                   that when we were taking a look at all these companies,  
8                   we ended up releasing a press release at one point that  
9                   -- mentioning that there are 250 -- there were 250  
10                  companies that had Ds or Fs from the Better Business  
11                  Bureau for cramming. And we've been asked about that  
12                  number before, and, frankly, we just stopped at 250. It  
13                  wasn't that we only found 250; we just -- we sort of just  
14                  -- basically we got tired of looking. So, we saw enough  
15                  to know that there's -- this is a major problem.

16                  I can't go into more detail at this point about  
17                  what it is the Committee is reviewing, but, as I said,  
18                  we'll be doing something publicly in the near future. I  
19                  also just want to take a few minutes just to explain what  
20                  we're seeing. As many of you know, cramming is not a new  
21                  problem. This has been addressed a number of times  
22                  today. It dates back to the 1990s when the credit --  
23                  when the telephone companies first opened their bills to  
24                  third-party charges.

25                  And, one, I want to make a point, too, that

1 earlier it was suggested that, well, there's a point in  
2 time when the telephone companies were required to place  
3 charges on their bills and now they're not required.  
4 Whatever that may be, the telephone companies were never  
5 -- have never been required to place unauthorized charges  
6 on telephone bills, and I think that's an important point  
7 to make. So, even when sales reps are saying that to  
8 their customers, that's -- that they were required to do  
9 it, even if it was before 2007, they were never required  
10 to put unauthorized charges on their customers' bills.

11 And I just want to spend just a couple minutes  
12 talking about what we saw -- so, part of our  
13 investigation, also, is just taking a look at the record  
14 that's developed about cramming over the last 15 or so  
15 years. And as Glenn mentioned earlier, the response that  
16 happened in the late '90s was quick. When cramming first  
17 appeared, the rise was so significant that the question  
18 at that time was not whether or not there should be a  
19 solution, but the question was what should the solution  
20 be. And the response was and telephone companies quickly  
21 got together and said let's do this voluntarily, let's  
22 fix this ourselves.

23 And by the time Congress got involved, because  
24 Congress did hold a number of hearings on this issue, the  
25 hearings that were held, the question that was addressed

1 during those hearings was basically about whether the  
2 voluntary actions would be enough. And what you saw in  
3 these hearings in the late '90s were the members of  
4 Congress who were on these committees, they were afraid  
5 of getting ahead of third-party billing, because no one  
6 wants to stifle innovation. And that's something that  
7 you see up here on Capitol Hill right now about the new  
8 issues that are appearing, whether it's privacy or  
9 whatever it is. No one wants to get in the way of  
10 innovation. And at the time, third-party billing was a  
11 very new system.

12 So, that was the framework within which the  
13 members of Congress looked at it, but they also were very  
14 concerned that the voluntary approach wouldn't be enough.  
15 And they were concerned because a lot of them took a look  
16 back at what happened on the credit card industry in the  
17 1970s, because a lot of people don't know this, but the  
18 credit card industry had the same problem as the  
19 telephone companies do with cramming. It was slightly  
20 different, but there were so many unauthorized charges  
21 appearing on credit cards that consumers were losing  
22 confidence in it.

23 And in response, Congress passed the Fair  
24 Credit Billing Act, which placed requirements on the  
25 credit card companies and limited the liability that

1 individuals could have, credit card customers could have.  
2 And, so, that was addressed. Senators looked back to  
3 that and thought maybe that's what we should be doing  
4 with respect to telephone bills. And in the end, the  
5 decision was made let's give the telephone companies the  
6 benefit of the doubt, let's allow them to fix this  
7 themselves.

8 And, so, today, 10 years later, when a charge  
9 is placed on a -- an unauthorized charge is placed on a  
10 telephone bill and a telephone consumer is trying to fix  
11 that, they're in a much different position than a credit  
12 card consumer who has an unauthorized charge on his  
13 credit card or a consumer who has an unauthorized charge  
14 on their debit card.

15 Their protections are much different, and  
16 because of that and because we're seeing that cramming  
17 remains to be a large problem, Senator Rockefeller has  
18 said that he wants to reexamine the voluntary guidelines  
19 that were established in the late '90s. And whether they  
20 were effective at that time, I've read and I've seen  
21 that, you know, the complaints came down afterwards, but  
22 what we're seeing is the cramming complaints have gone  
23 back up and in order to put an end to this problem once  
24 and for all, I think that we're going to have to  
25 reexamine and take a close look at it once again.

1                   And I just want to close just quickly with  
2                   Senator Durbin was at these hearings that were happening  
3                   back in the late '90s, and he was very concerned about  
4                   the unauthorized charges that were appearing, he was  
5                   concerned with the voluntary approach. And he said, you  
6                   know, we may find ourselves months from now or years from  
7                   now saying this just did not do it. And I found that  
8                   very telling now that it's over 10 years later and here I  
9                   am trying to address cramming. And his words, you know,  
10                  were certainly prophetic.

11                  And I just -- I know that Senator Rockefeller  
12                  will not want another 10 years to go by and all of us to  
13                  get back together here and talk about cramming once  
14                  again. So, I'm happy to take your questions later.  
15                  Thank you.

16                  MS. GREISMAN: Thank you, Erik. Elliot, you're  
17                  up next.

18                  MR. BURG: Hi, Lois. Thank you for inviting  
19                  me. This is Elliot Burg, I'm in Montpelier at the  
20                  Vermont Attorney General's Office. And I wanted to talk  
21                  briefly about a bill that was approved last week by both  
22                  houses of the Vermont legislature, and it addresses  
23                  cramming actually by prohibiting most third-party charges  
24                  to local phone bills, meaning landline bills.

25                  But before I talk about the legislation, I'd

1       like to give a little bit of background, and I'm going to  
2       be talking about that same 10-year interval that Erik  
3       just referred to. Back in the year 2000, the State of  
4       Vermont responded to concerns about cramming by enacting  
5       a disclosure statute, which required -- actually today  
6       still requires -- that any third-party that wants to  
7       place charges on a local phone bill has to send through  
8       the mail a freestanding notice of that fact to the  
9       consumer, and in Vermont a consumer includes both  
10      individual consumers and businesses. And the letter has  
11      to disclose what is being purchased, for how much, any  
12      right of cancellation, and contact information for the  
13      Attorney General's complaint-handling office.

14                The takeaway from that particular experiment  
15      has been that it doesn't work. It doesn't work to  
16      prevent cramming. And I think the reason it doesn't work  
17      is that the prevailing expectation among individual and  
18      business consumers does not allow that third-party  
19      charges are going to appear on local phone bills anymore  
20      than we expect that third-party charges will appear on  
21      our electric bill or on our mortgage account statement.

22                So, over the past year, we've been  
23      investigating third-party charges to local exchange  
24      carrier bills. We've issued a number of subpoenas to  
25      major aggregators, and upon learning the identities of

1 the merchants that they aggregate for, we've issued  
2 subpoenas to, at this point, probably three or four dozen  
3 merchants. We've taken a look at marketing materials.  
4 We have surveyed their customers. We've looked to see if  
5 they've been complying with the notice requirement that I  
6 just mentioned.

7 And, basically, here's what we've found. First  
8 of all, almost nobody is complying strictly with this  
9 requirement, but that's just one issue. There's a more  
10 fundamental reality that has to do with what people  
11 understand is actually happening or don't understand is  
12 happening.

13 Secondly, we found that I think I can say all  
14 or virtually all of the telephonic scripts that have been  
15 used, that is where third-party charges to phone bills  
16 are supported by telephonic marketing, typically to  
17 businesses, the scripts have been deceptive. It's almost  
18 as if somebody wrote one deceptive script and everybody  
19 picked up the same wording. It's a little uncanny.

20 But most importantly we have found based on  
21 surveying customers of the companies that have been  
22 putting through these charges to the phone bills and  
23 interviewing many of those people and businesses, we have  
24 found that a very substantial majority of the people out  
25 there do not understand that they can be billed on their

1 phone bills for charges that are unrelated to their  
2 telephone service. We sent out in the first wave of  
3 merchant investigations, we sent out I think about 1,700  
4 written surveys. We got something over 500 responses  
5 back, which is not bad for that kind of survey, and  
6 almost 93 percent of the people who responded had  
7 absolutely no recollection of ever having agreed to be  
8 charged on their local phone bills.

9 So, we came back to the issue of reasonable  
10 consumer expectation. And last fall, we began  
11 discussions with the local exchange carriers in Vermont,  
12 FairPoint and other smaller companies. And our appeal to  
13 them was that the people that are being harmed by these  
14 kinds of charges, these unauthorized and/or unknown  
15 charges, are their customers, too. And we ended up  
16 forging kind of a three-way coalition with the local  
17 exchange carriers and our Public Service Department,  
18 which is the advocacy -- the consumer advocacy wing of  
19 our Public Utilities Commission.

20 We went to the legislature in January with an  
21 anti-cramming bill. And that's what was approved last  
22 week, and here's what it provides. It prohibits third-  
23 party charges for goods or services on local exchange  
24 phone bills, landline bills.

25 It has the following exceptions, and I think

1 you can probably understand when you hear what those are  
2 why we considered it reasonable to include these as  
3 exceptions. So, you can put through that kind of billing  
4 for goods or services that are marketed or sold by  
5 companies that are subject to our public service board,  
6 our Public Utilities Commission, jurisdiction. And,  
7 also, exempted or excepted are direct and dial-around  
8 phone calls, operator-assisted calls, collect calls, and  
9 phone service between prison inmates and their families.

10 Carried through from the earlier disclosure  
11 statute was strict liability imposed on the aggregators.  
12 So, if a charge is put through under the new law that is  
13 not allowed, the aggregator responsible for placing that  
14 charge on a phone bill is equally liable. A violation of  
15 the prohibition is a violation of our Consumer Fraud Act.  
16 It is deemed an unfair and deceptive act and practice and  
17 can be sanctioned with a requirement that consumers be  
18 refunded their money, up to \$10,000 in civil penalties,  
19 injunctive relief, attorneys' fees, and other kinds of  
20 relief.

21 So, in essence, we've gone all the way here and  
22 said that -- I think what we've done reflects some  
23 reticence about -- some hesitation to believe that there  
24 is a way of keeping the onus on consumers to opt out of  
25 this kind of billing or to recognize on their telephone

1 bills that they actually are being charged for something  
2 they haven't agreed to. And we simply said, here, if a  
3 merchant wants to be paid by a business or an individual  
4 consumer, there are lots of ways of doing that. There  
5 are credit cards and debit cards and checks that can be  
6 written and PayPal. This is not an appropriate way to do  
7 it, and it's not consistent with normal, human  
8 expectations out there, and it's not going to happen  
9 anymore.

10 So, we're awaiting our Governor's signature on  
11 this legislation, which we expect fairly soon, and I'm  
12 happy to answer any questions that anybody may have. I  
13 personally think this may be a model for other states  
14 that want to deal in a fairly strong way with the  
15 phenomenon of cramming, but obviously that's a decision  
16 that each jurisdiction has to make themselves. So, thank  
17 you.

18 MS. GREISMAN: And we thank you very much. And  
19 I'm going to hold questions until later.

20 Next, Keith.

21 MR. VANDEN DOOREN: Thanks very much. My name  
22 is Keith Vanden Dooren, I'm with the Florida Attorney  
23 General's Office. I would first of all just say I ditto  
24 everything Elliot just said, in particular, putting the  
25 onus on consumers to, you know, get unauthorized charges

1 off their bills after the fact is not where we need to  
2 go. But I'm going to get to that in a minute.

3 And I'm also going to go through some slides  
4 here, but I'm going to go through them fairly rapidly  
5 because some of this has already been covered, and I  
6 don't want to be redundant in going over it again.

7 First thing I want to talk about a little bit  
8 is complaints. And I'm going to -- I need to go into  
9 this a little bit to lead into what Florida wants to  
10 recommend in terms of a solution to cramming. And first  
11 of all, we were talking a lot today about complaints and  
12 the capturing of complaint data. And one of the things  
13 that we've found is that whatever is being captured and  
14 turned over by the carriers, aggregators, and others is  
15 not what we see as the total number of complaints.

16 For example, we know that when customers  
17 receive partial refunds, sometimes it's three months,  
18 companies will give them three months of a refund credit  
19 on their bill. Well, a lot of times the carriers view  
20 that as a resolution and that's not a complaint. Well,  
21 to us, that's a complaint.

22 This came out strong in a case that we were  
23 handling not too long ago in a trial where we requested  
24 certain complaint data in discovery. And we happened to  
25 have about 30 witnesses, consumer witnesses, on our

1 witness list. And we asked the carriers for all of the  
2 complaint data that they had relating to these witnesses,  
3 because we already had written documents where they had  
4 sent the information to the carriers, but we wanted to  
5 see everything the carriers had.

6 The carriers came back with only about less  
7 than 50 percent of the complaint data relating to our own  
8 witnesses in this case. I'm not sure how that happens,  
9 but whatever complaint data is being captured is not 100  
10 percent, I don't believe, of the complaint data where  
11 customers are making complaints to the carriers and  
12 aggregators. So, that is problematic, also.

13 I'm just going to go through a few of the  
14 complaints because I think it reflects why we think we  
15 should have a solution, and I'm going to get to in a  
16 second here to block all unauthorized third-party  
17 charges, unless a customer would want to authorize that.

18 First of all, this is a consumer who complained  
19 about the fact that Verizon was basically using her bill  
20 as a credit card, which, in fact, she had said she had  
21 never given them permission to do. Unlike credit cards,  
22 this kind of billing structure does not have all the  
23 safeguards that credit cards have, including a certain  
24 level of injury before, you know, it ceilings out, they  
25 don't have PIN numbers, we don't have credit card

1 numbers, we don't have any of that kind of security like  
2 we do with a credit card.

3 And, also, we have carriers who continue to  
4 say, and this came out in other panels, where the  
5 carriers tell customers, and we have this in Florida all  
6 the time, that we cannot help you, we cannot refund your  
7 charges, we cannot put a block on your phone, things such  
8 as that.

9 I think this particular complaint in Florida  
10 was very telling. When this particular customer called  
11 and it happened to be Verizon -- I'm not picking on  
12 Verizon -- they were told that they couldn't get -- they  
13 never said anything about a third-party block, which that  
14 happens quite frequently, and I'm sure it happens all  
15 over the country. And it continues to happen, and I  
16 don't know if that's a training problem or otherwise, but  
17 in any event, it happens. And this customer says, "I  
18 would think that the block would be automatic unless the  
19 customer requested not to have a block. That way, such  
20 events would not take place."

21 And just -- I'm not going to spend a lot of  
22 time because this has been stated before and I think  
23 Elliot stated it pretty well in his presentation, but  
24 basically most customers do not know that third-party  
25 charges can be placed on their telephone bills. I mean,

1       they don't think that way, and they're not expecting it.  
2       And because they're not expecting it on their telephone  
3       bill, they're not looking at it very closely either,  
4       which means that they normally don't pick up on the fact  
5       that they have had unauthorized charges placed on their  
6       bill.

7                 Case in point, we had a case against EDN. I  
8       think that's E-mail Discount Network. And in that case,  
9       our investigators went out and contacted approximately  
10      200 customers. Not one of those customers, not one, knew  
11      that they had had these charges on their bill until they  
12      looked at it. Customers are not going to pick up on  
13      this.

14                The other problem I see in the cramming area is  
15      that all of the parties -- I'm talking about the  
16      carriers, the aggregators, and the vendors -- all are  
17      uncentivized, they all make money out of this. And most  
18      of the time what we hear from customer service reps and  
19      others is they are incentivized to save -- save --  
20      accounts and transactions and charges, not to remove  
21      them. And we get so many complaints where people have  
22      asked to have the charges removed, they send them through  
23      the circle. They send them to the aggregator, they send  
24      them to the vendor. And they get into the circle and  
25      they never get out of the circle.

1 All right, this takes me to what we would  
2 recommend in Florida, although I might say as a personal  
3 note that I would be in favor of just banning all types  
4 of third-party charges. I think that would take care of  
5 the matter, and I think it's appropriate in view of the  
6 fact that most customers don't know they're getting these  
7 charges and don't expect to get charges on their phone  
8 bill. And I'm talking landline. Wireless is another  
9 issue, but I think it could use the same approach.

10 What we are offering up as a suggestion --  
11 excuse me -- on behalf of Florida is the initial block.  
12 And what we mean by that is the way it's set up now,  
13 somebody has to ask voluntarily to have a block put on  
14 their telephone account. We would like to see this  
15 reversed, since most people don't know they're getting  
16 these charges on there and don't anticipate getting any  
17 of these charges on their phone bill is to have a block  
18 put on initially.

19 Then, if a customer so wants to have some  
20 third-party service, product, whatever, they can contact  
21 their carrier, who they -- that's where they go to  
22 directly. I mean, that's who they trust to do all of  
23 their phone bill transactions. To have the third-party  
24 block removed either as to a particular sub-kick vendor  
25 or to have it removed as to everything.

1                   And if that were done, we would have to have  
2 clear and conspicuous, informed -- clear and conspicuous  
3 disclosures about what that would mean to get the block  
4 removed and all the terms and conditions that relate to  
5 that, as well as an expressed, informed consent to do it.  
6 And what we mean by that is some kind of written document  
7 from the account -- telephone account owner to the  
8 company saying "I want this block removed either  
9 partially or in full."

10                   So, with that I guess I'm pretty well out of  
11 time, right, Nadia? All right.

12                   MS. GREISMAN: Do you want a minute to wrap up?

13                   MR. VANDEN DOOREN: I'm fine. I'm at the --  
14 the only other thing I would say is -- I have another  
15 slide here. This -- we have addressed also in Florida  
16 carrier -- what we call carrier add-on charges, which one  
17 of our bigger cases was related to roadside assistance.  
18 Roadside assistance is like AAA, you know, they go out  
19 and pick up your car if you have to have a repair or  
20 whatever.

21                   This actually went through the wireless side,  
22 and it was a wireless company. And it was basically --  
23 what we see also in cramming is that most of the offers  
24 are in negative options. So, you got a free trial for 30  
25 days; if you don't like it, you got to cancel it, people

1 don't know they have to cancel it, it's not really  
2 disclosed, those kinds of things. That's what happened  
3 in this particular case I'm referring to. The carrier,  
4 at the point of sale, sometimes never even mentioned  
5 roadside assistance but people ended up with it. Didn't  
6 know they had for long periods of time, sometimes years.

7 So, it's not just limited to distinct third-  
8 party vendors. It also happens once in a while with  
9 regard to the carriers themselves and their particular  
10 products that they're selling and offering. So, with  
11 that, I appreciate it, thanks very much.

12 MS. GREISMAN: Thank you very much, Keith.

13 Joel?

14 MR. GURIN: Hi. I'm Joel Gurin, I'm Chief of  
15 the Consumer and Governmental Affairs Bureau at the FCC  
16 and very glad to be here. I would say at the FCC we have  
17 been involved in the issue of cramming in many different  
18 ways for many years. I would say right now we're kind of  
19 in a period of studying the situation. So, this is an  
20 extraordinarily useful day for us. We've had a couple of  
21 folks from the FCC here all day and very interested in  
22 what everybody's had to say.

23 Let me tell you a little bit about both how we  
24 know from our perspective that cramming is a problem and  
25 how we address it as an agency and what we see as some

1 areas where it would be important to look for solutions.  
2 We look first at our own complaint data. We receive  
3 cramming complaints about both wireline and wireless  
4 carriers.

5 And one thing that the FCC actually does is  
6 that we actually will try to mediate these complaints for  
7 consumers. So, if people have gone to their carrier and  
8 haven't been successful, we will get involved and try to  
9 get satisfaction for them. So, that means that we often  
10 compile fairly lengthy kind of dossiers on these cases,  
11 which is very helpful in looking at a problem like this.

12 We get about 2,000 to 3,000 complaints a year  
13 about cramming, which given our complaint data base is  
14 quite significant. And what we have found in the last  
15 few years is that about 85 percent of those are wireline  
16 and maybe about, you know, around 15 are wireless. So,  
17 we are seeing wirelines still as the dominant problem,  
18 but not as big -- but that wireless is also one that I  
19 think is going to increasingly need some attention.

20 What people complain about is, you know,  
21 services like long distance call, international, or  
22 collect calls that were not actually made or received, as  
23 well as add-ons like games or security, tech support,  
24 things like that that they see on their landline bills.  
25 And on wireless, we also get -- we also get, of course,

1       you know, the horoscopes and the roadside assistance and  
2       all of that kind of thing.

3               So, our jurisdiction is very complimentary to  
4       that of the FTC, so what we can do is if a common carrier  
5       is doing cramming, in other words, if somebody providing  
6       common carrier services like long distance or whatever is  
7       placing an unauthorized charge on Verizon's bill, we can  
8       go after the initial crammer through enforcement actions.  
9       And we have done that from time to time.

10              In terms of the LECs and the wireless carriers,  
11       what we can do and what we have done in various ways is  
12       we -- under our truth-in-billing rules, they have to  
13       disclose the charges on the bills in a clear and  
14       conspicuous way, and I think there's an ongoing question  
15       of what clear and conspicuous actually means. And of  
16       course if those carriers actually engage in cramming  
17       activity themselves, then our enforcement bureau can take  
18       action.

19              Now, the biggest example of that was a consent  
20       decree that was worked out with Verizon that you may have  
21       heard about last year where a number of consumers and  
22       also press had reported that a number of Verizon Wireless  
23       pay-as-you-go customers had unexpected data charges of  
24       \$1.99 per megabyte on their bills. Apparently there was  
25       a way in which you could very easily activate that

1 without knowing that.

2 We actually consider that to fall under  
3 cramming because we consider it an unauthorized charge  
4 placed on the bill by the carrier. And that was -- that  
5 was actually a major settlement where Verizon is now  
6 refunding customers more than \$50 million for improper  
7 charges, and they've made a voluntary \$25 million  
8 contribution to the U.S. Treasury, which is the largest  
9 payment the FCC has ever secured in a case like this.

10 We also, as we assess the scope of this  
11 problem, so the name of my bureau is Consumer and  
12 Governmental Affairs, that means we work a lot with state  
13 and local governments. And we've been very, very  
14 interested, certainly very interesting to hear what's  
15 going on in Florida, what's going on in Vermont.

16 We've also been interested in the statistics  
17 collected in California. So, in California, there's a  
18 law that the LECs have to make public the number of  
19 complaints that they get on cramming every year. And  
20 it's very interesting because it kind of gives you  
21 perspective on the ratio of the complaints we see, the  
22 complaints we don't see. So, the state PUC in California  
23 gets around 2,000 to 3,000 formal complaints about  
24 cramming that come to them every year. But the LECs  
25 apparently get about 120,000 complaints a year, which are

1 made public under California's law.

2 Now, we figure that's maybe 1 or 2 percent of  
3 all landline households in California. But we also know  
4 from a lot of experience, and you heard a lot about this  
5 today, that so many cases of cramming go undetected that  
6 they never reach the complaint state. So, I think  
7 there's all kinds of evidence that this is a significant  
8 problem.

9 So, what we've been doing, in August 2009, the  
10 FCC issued a notice of inquiry on consumer information  
11 and disclosure, which I kind of think of as truth-in-  
12 billing at large. So, this builds on truth-in-billing,  
13 but unlike truth-in-billing, we are looking not only at  
14 billing issues but also at disclosure at the point of  
15 sale, at disclosure of fees, you know, when somebody may  
16 want to change service so this takes into account things  
17 like early termination fees and so on.

18 We've gotten a number of comments under that  
19 notice of inquiry from state and federal groups and  
20 consumer groups about the continuing problem of cramming.  
21 The attorneys general of more than 25 states told us that  
22 cramming is a significant problem for consumers in their  
23 states. And we continue to see this as a very  
24 significant issue.

25 So, what can be done about this? As I said, we

1 are kind of in studying and listening mode, but there are  
2 certainly a number of kinds of issues that have come to  
3 our attention as possible areas. And I think they really  
4 fall in the very general areas of disclosure and blocking  
5 and education. I mean, one thing that we think we can  
6 take part in doing is educating consumers about the  
7 existence of cramming because it's clear that so many  
8 people still don't know about it.

9 Blocking options, I think, are very  
10 interesting. You know, one thing that we noted on the  
11 wireless side is the CTIA has just come out with a  
12 wireless consumer checklist initiative to give consumers  
13 standard questions to ask when they sign up for wireless  
14 service. We think this is a great development and we  
15 note that one of those questions is asking whether or not  
16 it's possible to block third-party charges from a  
17 consumer's bill. So, we think that that kind of  
18 awareness at the point of sale is a very good thing.  
19 Many people don't know about blocking options when they  
20 sign up.

21 We've also found in talking to wireline and  
22 wireless carriers that many carriers actually do not  
23 offer that option when you sign up, but they will offer  
24 it if you call to complain about cramming. So, given  
25 that it's obviously possible to offer a blocking option,

1 the question is could this be done earlier, could this be  
2 done more proactively.

3 We think that billing formats are definitely  
4 something to look at, clear and conspicuous disclosure  
5 can mean different things to different people. We have  
6 certainly had complaints from people where either third-  
7 party chargers were mingled in with other legitimate  
8 charges or were put at the very end of the bill after  
9 what looked like the last page of a bill. So, it was  
10 there in a separate form, but it would be very easy to  
11 miss, even for somebody looking at their bill.

12 I think a lot of -- a lot of -- those two  
13 areas, disclosure and blocking, leave a lot of room, I  
14 think, for exploration, for exploration for voluntary  
15 solutions, for other kinds of solutions, clearly. And  
16 there is state legislation happening now, the Senate's  
17 investigation of this, of course, is of great interest to  
18 us. But we do think that this is a very important  
19 problem. It's a very nagging and significant problem and  
20 one that really is amenable to some fairly simple  
21 solutions as we go forward. So, thank you very much.

22 MS. GREISMAN: Thank you, Joel.

23 John?

24 MR. BREYAULT: So, I'm in the unenviable  
25 position of batting cleanup after all these great

1 comments, but I did want to take a moment to thank Lois  
2 and the FTC for convening what I think is a really  
3 important forum today and for inviting NCL to speak.

4 So, again, I'm John Breyault, I'm with the  
5 National Consumers League. We were founded in 1899, that  
6 makes us the nation's oldest consumer organization, and,  
7 no, I'm not a founding member.

8 So, but I would agree with the sentiments that  
9 have been expressed on this panel, as well as others  
10 today, that the problem of cramming is still with us, as  
11 evidenced by the Inc21 case last year and similar cases  
12 at the federal and state level. The FTC continues to  
13 receive complaints about cramming last year. They just  
14 reported this in their March Consumer Sentinel Data Book,  
15 they received more than 37,000 complaints related to  
16 telephone and mobile services. That's a category that  
17 includes cramming and other types of complaints. Joel  
18 just alluded to the thousands of complaints that the FCC  
19 receives, as well as the complaints the California LECs  
20 are receiving.

21 In my opinion, there's very little legitimate  
22 business being conducted that uses third-party billing on  
23 landline phone bills. Mr. Burg, who spoke earlier, was  
24 quoted recently. He mentioned that 93 percent of the  
25 respondents to the Vermont survey said that they had no

1 idea that they had signed up for these charges. There  
2 have been other similar statistics described today.

3 To a consumer organization like us, third-party  
4 billing on landline phone bills is in many ways a relic  
5 of the days before consumers began to widely adopt credit  
6 and debit cards. Credit in particular has described. It  
7 provides many more protections for consumers under the  
8 Fair Credit Billing Act than they have on their phone  
9 bills. In a sense, you know, we almost wish that  
10 telephone companies would focus on providing telephone  
11 service and less on being -- providing billing and being  
12 a de facto payment mechanism.

13 So, what are some areas for improvement and the  
14 cramming problem can be addressed? As I described, I  
15 think number one, it's inherently flawed. The blanket  
16 outlawing of third-party billing through the landline  
17 phone bills seems to us like the most prudent option.  
18 That said, until legislation passes that addresses that,  
19 and we certainly hope that Senator Rockefeller will  
20 consider that when his investigation is completed, we  
21 still think there are several improvements that can be  
22 put in place.

23 First, all phone customers requesting a third-  
24 party billing block should be granted it with no  
25 questions asked. AT&T mentioned in its filing for this

1 workshop that it proactively offers third-party billing  
2 when a consumer calls with a cramming complaint, where  
3 other telephone companies don't offer that and they  
4 should.

5 Third-party billing should also -- third-party  
6 billing block should always be free of charge, and we  
7 think that it should be offered as an option at service  
8 inception. Better yet, third-party billing should be  
9 turned off by default for all existing customers unless  
10 they affirmatively opt in for a service they express a  
11 desire for in writing.

12 Second, telephone companies, regardless of  
13 their size, should be required to conduct thorough and  
14 ongoing cramming prevention audits of the aggregators and  
15 third-party service providers with whom they have  
16 contractual agreements. Senator Rockefeller's cramming  
17 investigation suggests that despite the protection  
18 programs in place, cramming remains a significant issue  
19 and that the existing audit and control mechanisms that  
20 are in place are insufficient to address the problem and  
21 keep it in check.

22 There needs to be better coordination between  
23 the carriers and the stakeholders in the cramming debate,  
24 including the FTC, the FCC, and the BBB. If a cramming  
25 complaint is received by any one of those three

1 organizations, it should trigger an investigation by the  
2 carrier with the billing aggregator and the third-party  
3 vendor.

4 As Senator Rockefeller noted, third-party  
5 service providers have a pretty terrible record with the  
6 BBB and are generating thousands of complaints to the  
7 FTC. There needs to be greater coordination to ensure  
8 that these complaints are followed up on by the carriers,  
9 with the aggregators, and with the third-party service  
10 providers.

11 On disclosure, a consumer who notices a  
12 questionable charge on their phone bill may have a hard  
13 time recognizing it, even if they actually see it. And  
14 we know that consumers generally are not noticing this to  
15 begin with, but when they do see it, there needs to be a  
16 better way for them to recognize it as cramming.

17 In my opinion, they would be more likely to  
18 recognize a suspicious charge as cramming if the charge  
19 was listed under the name of the third-party service  
20 provider. So, A, disclosure rules that are considered  
21 should require that the third-party service provider name  
22 be the one that's listed first on the bill, followed by  
23 the aggregator, if the aggregator is going to be  
24 mentioned at all. In this way, we think that the  
25 consumer can better recognizing the cramming.

1                   One of the things that has been suggested is a  
2 registry of consumers that don't want third-party  
3 billing. This stems from the success of the Do Not Call  
4 Registry. That was hugely successful and beneficial to  
5 consumers. But can that success be replicated here? I'm  
6 not sure. For one thing, cramming in and of itself is  
7 illegal. Telemarketing phone calls were annoying, but  
8 they are generally legal. So, how can you -- I don't see  
9 how a registry to opt you out of something that is  
10 already illegal would be useful.

11                   As far as the long-term viability of third-  
12 party billing, I think you'd be better off just  
13 considering whether it's useful at all, whether the --  
14 whether it's an obsolete business model where the threat  
15 of cramming outweighs any potential benefit to consumers  
16 that they could receive from that as a payment model.

17                   We think that the results of the Vermont AG  
18 survey and other surveys were reflected nationally, that  
19 this would be proven indefinitely. I think you saw in  
20 the affiliate marketing -- in the affiliate marketing  
21 side that Senator Rockefeller looked at last year that  
22 once you start to dig into these services, consumers are  
23 overwhelmingly not interested, they don't want these  
24 services, they didn't mean to have them in the first  
25 place. So, I think that this is -- third-party billing

1 is a business model that's going to be shown to be based  
2 on deception of consumers.

3 And the way to address that, I think, is  
4 basically by outlawing it. I think you'll see that in --  
5 and I would not be surprised to see that in legislation  
6 coming forward, the basically just saying a blanket  
7 outlawing of third-party billing on the landline side.

8 And on the mobile side, I think the picture is  
9 much less clear. Obviously, text-to-donate services are  
10 hugely beneficial and non-profits, as demonstrated by the  
11 response to the Haiti earthquake for organizations like  
12 the Red Cross. As things like mobile wallets and credit  
13 cards become more tightly integrated with the mobile  
14 phone, I wonder will billing via the mobile phone go the  
15 same as billing the landline phones, so in a sense as  
16 your credit card account and a mobile wallet is really  
17 the payment mechanism and simply the mobile is just a way  
18 to access that, will actually putting charges for  
19 services on a mobile bill become as obsolete as how I  
20 think that third-party billing on the landline side will  
21 become. So, it's tough to say right now.

22 It's also a little more difficult, I think, to  
23 regulate that on the wireless side, because they are more  
24 loosely regulated in general than the landline phone  
25 service. So, I think this puts more of an onus on the

1           FTC to ensure that billing via the mobile platform is  
2           conducted in a fashion that doesn't deceive consumers.  
3           At the very least, I think the FTC should be asking  
4           carriers to ensure that the processes they've implemented  
5           on the landline side to control cramming be implemented  
6           on the wireless side, as well. And of course a more  
7           aggressive approach would be simply to require that a  
8           third-party billing block be an option offered to  
9           consumers on the wireless at service inception.

10                        So, those are just a smattering of the  
11           solutions to this problem. And, again, I want to thank  
12           the FTC for having us here, and I look forward to  
13           answering the questions.

14                        MS. GREISMAN: Thank you, John. And thanks  
15           again to each of you. I've got a number of questions,  
16           and we did have question cards that had been circulated  
17           and collected in the back. Interesting, most of them are  
18           not questions, so I just want to read some of the  
19           statements so that we have a complete record to work  
20           with.

21                        One just says require written authorization  
22           through the U.S. Mail. Another, isn't it clear at this  
23           point that the FCC's best practices are not working,  
24           given that consumers do not know as shown by Inc21 that  
25           third-parties can bill them? Shouldn't consumers have to

1 opt in with a notarized statement?

2 Eliminating third-party billing will cut the  
3 time and money the government spends and eliminate  
4 cramming. There are a couple of others which we'll get  
5 to later.

6 Let me start out asking a few questions. We've  
7 got a good 15 minutes, so I will be able to open up to  
8 everyone in the room.

9 Elliot, point of clarification: Is your -- is  
10 the bill that's been passed limited to wireless -- to  
11 wireline billing, and did --

12 MR. BURG: It's limited to wireline.

13 MS. GREISMAN: And was there consideration as  
14 to whether to expand it to wireless?

15 MR. BURG: No, I'm sure you heard -- or I think  
16 you may have addressed the differences between wireless  
17 and landline expectations in your program. We didn't  
18 feel -- I mean, I think one thing that was clear, the  
19 alliance that we had with the telephone company would  
20 have been very difficult to replicate in the wireless  
21 area. I find it difficult to believe that we would have  
22 had that unanimity.

23 I actually have some other things that I wanted  
24 to mention. But that's my brief answer.

25 MS. GREISMAN: Okay, before we come back to

1           you, Keith, can you follow up, because at one point you  
2           suggested that it was different but perhaps the same  
3           rules of the road should apply were blocking to be  
4           enacted.

5                       MR. VANDEN DOOREN:    Sure, I mean --

6                       MS. GREISMAN:    Can we use the mic, please?

7                       MR. VANDEN DOOREN:    Well, all I meant by that  
8           was aside from the -- whatever technical differences  
9           there are, and I'm not sure there are that many  
10          differences, but be that as it may, I don't see why you  
11          could not have similar type initial block on wireless as  
12          well as the landline.

13                      MS. GREISMAN:    Would anyone else like to  
14          comment on that?

15                      MR. JONES:    I'll just make a -- just a quick  
16          point.  And I wasn't entirely clear on this earlier when  
17          I spoke, but the Committee's investigation is limited to  
18          landline telephone bills.  And we have focused on the  
19          landline side first because the billing system developed  
20          in the 1990s, and there's been plenty of time for a  
21          record to develop for us to understand how well that's  
22          going.  And that's why we're focused on that for now.

23                      But at the same time, I should mention just --  
24          we have seen that there are some issues on the wireline  
25          side and, you know, it's -- sorry, wireless side, and

1 we're still sort of waiting to see how this goes to  
2 determine what we'll do on that.

3 MR. GURIN: I would also say I think there  
4 is -- we also have to stay very clear on the difference  
5 between mandatory blocking and the option for blocking.  
6 I mean, generally we're -- I think most of us are in  
7 favor of consumers having options for how they get  
8 service, so if wireless companies wanted to offer people  
9 the option to block third-party charges, then that seems  
10 like a reasonable thing to explore.

11 But I think the kind of blocking of most third-  
12 party charges that Vermont and other states are  
13 considering for wireline, John, as you said, I think with  
14 wireless it's much more complex because I think there are  
15 clearly third-party charges on the wireless side that are  
16 legitimate, whereas with wireline that's less clear.

17 MS. GREISMAN: Elliot, let me -- I'm sorry, go  
18 ahead, John.

19 MR. BREYAUULT: The one issue that you have, I  
20 think, with an opt-out regime on third-party billing is  
21 that if it's intended -- the opt-out regime is intended  
22 to control cramming. The problem lies in that cramming  
23 is inherently deceptive. We know that consumers tend to  
24 overlook these charges on their bills, often for months  
25 and sometimes years at a time.

1                   And, so, it's -- by putting an onus on the  
2                   consumer to recognize the cramming and then ask for the  
3                   block, I think you just leave the field open to  
4                   unscrupulous actors who do want to cram on the wireless  
5                   side. So, this is why I think that, you know, the third-  
6                   party block should be allowed at service inception --  
7                   should be recommended at service inception, if not made  
8                   the default when a consumer signs up for service.

9                   Certainly, I think, you know, it -- Erik  
10                  referenced that, you know, you have now a very strong  
11                  record of cramming on the landline side to work with. On  
12                  the wireless, you obviously don't have that record at  
13                  this point because it's only been widely embraced in the  
14                  past decade. But I think, you know, and as well you do  
15                  have a demonstrated record of services that absolutely  
16                  legitimately bill via the wireless side, and the text-to-  
17                  donate I mentioned is one. There are others.

18                  So, I think the real key is going to be how do  
19                  you allow third-party billing for the good actors but  
20                  still keep out the bad actors who just want to cram on  
21                  your phone bill in a way that doesn't require consumers  
22                  to spot the cram to begin with and then ask for the  
23                  block.

24                  MR. GURIN: Yeah, and I just want to reinforce  
25                  that this goes back to the notice of inquiry that we put

1 out in 2009. John, what you said about, you know,  
2 disclosure at the inception of service at point of sale,  
3 I think that's a concept that's very important for us to  
4 look at at a number of issues. When we think about our  
5 own truth-in-billing rules, by definition, they are about  
6 truth-in-billing. Truth at point of sale and what should  
7 be disclosed at point of sale is, I think, a kind of  
8 evolving consumer issue. Certainly issues like early  
9 termination fees raise that question, as well. And I  
10 think with cramming it may well be that part of the  
11 solution is not just what you show on the bills but what  
12 you tell people when they sign up for service about what  
13 their options are.

14 MS. GREISMAN: So, we've heard a number of  
15 challenges with respect to a voluntary blocking  
16 mechanism. Are there -- I mean, there are ways of doing  
17 it at the point of sale, but as a practical matter, a lot  
18 of customers never change their carrier, and then you're  
19 talking about bill inserts. But are there other ways of  
20 making a voluntary -- to enhance the credibility and  
21 utility of a voluntary block? Does it matter if the  
22 registry is kept with the carrier as opposed to some  
23 other third-party? Does that shift any balance?

24 John, any thoughts?

25 MR. BREYAULT: Well, I mean, again, I think,

1       you know, the registry idea has a certain appeal to it  
2       because most consumers have signed up for the Do Not Call  
3       registry, but I'm not sure that a registry to opt out of  
4       something that they should not be charged for in the  
5       first place is -- I'm not sure that that is going to be a  
6       very useful tool.

7                I think the proactive protection of the  
8       consumer from that -- from the charge would be much more  
9       effective than requiring the consumers to voluntarily go  
10      and sign up to opt out of it. As has been demonstrated  
11      by numerous speakers today, most consumers don't even  
12      know that they can be charged on their phone bill by  
13      third-parties. So, you know, if you were to have a  
14      registry, I think you would need really significant  
15      consumer education to let consumers know that they can be  
16      charged and then they'd have to call -- then they'd have  
17      to opt out on the registry. I think that's kind of a  
18      backwards way of going at it.

19               MS. GREISMAN: Erik?

20               MR. JONES: I'd just like to add a couple  
21      points to that. What John's saying about, and other  
22      panels have said this, as well, but in our investigation  
23      we're seeing the same thing with respect to consumer  
24      awareness about third-party billing on telephone bills.  
25      I mean, and this is anecdotal, but consumers just do not

1 get that their telephone numbers can be used in a fashion  
2 similar to a credit card. It's just not -- it hasn't  
3 taken, and it's been over -- now, well over a decade  
4 since it was first implemented. And I don't think that's  
5 going to happen.

6 And, secondly, with the use of blocking, by  
7 using that as a way to solve this problem, what you're  
8 really doing is just consumers who finally figure out  
9 that something has happened, that's when you see blocking  
10 requests. You don't see people proactively doing this.  
11 And, so, it's very difficult. I think it's going to be a  
12 very difficult way to fix this problem just through  
13 blocking alone.

14 MS. GREISMAN: I think that's a fair point.  
15 It's hard to know that you need to opt out of something  
16 that you don't know is happening out there.

17 Elliot, let me go back to you. You said you  
18 wanted to supplement your comments?

19 MR. BURG: Yeah, just a couple of points here.  
20 The first one I hope I'm just hammering this into ground,  
21 but I wanted to say something about the ratio between  
22 complaints and actual victims in the cramming area and  
23 just give a specific here. So, for not so small a state  
24 we have 600,000 people in our entire population. We've  
25 had through our public service department 72 cramming

1 complaints in the last year. We took -- we've had a  
2 number of settlements now, eight settlements with  
3 merchants, we have many more in the pipeline.

4 And this is eight out of hundreds and hundreds  
5 of merchants, most of whom are never going to see an  
6 enforcement action because we can't pursue them all. If  
7 we total up the number of individuals and companies that  
8 were billed by those eight merchants, it's almost 6,000.  
9 Now, this is eight out of hundreds of companies, and this  
10 is 6,000 in relation to 72 complaints.

11 But it's really not apples and apples. The  
12 6,000 should be multiplied by, you know, whatever factors  
13 pull all the merchants in. So, we're talking about just  
14 a huge reservoir of unseeing, unknowing people out there  
15 who are never going to complain because they don't know  
16 it's happening.

17 The second thing I wanted to say is I know that  
18 the Rockefeller committee looked at this in connection  
19 with another issue, discount membership programs. And  
20 that's the question of usage, that is, people that are  
21 billed on their phone bills for services offered by these  
22 various merchants, what are they getting, and are they  
23 actually using what they're getting.

24 What we're seeing for business customers is  
25 that the service that is most often offered is online

1 yellow pages directory services, which is, first of all,  
2 in the internet/Google age, I don't know why a company  
3 would want to order that, but how would anybody know that  
4 it's out there anyway? So, business can go on for years  
5 not knowing that in the -- in the online world somewhere  
6 there's some kind of listing for them that doesn't really  
7 impact their local business anyway.

8 For consumers, it's very common to find the  
9 service consisting of voicemail or e-mail. And we think  
10 that these -- this service or these services are  
11 duplicating what people already have. Why would somebody  
12 order third-party voicemail if they already have  
13 voicemail from their landline telephone company? It's  
14 very easy to create a service that on the surface looks  
15 -- it passes the due-diligence test with the landline  
16 telephone company when, in fact, it's not providing  
17 anything of additional benefit to the consumer.

18 MS. GREISMAN: Thank you.

19 MR. BURG: More reasons to be concerned about  
20 continuing to allow billing on mobile phone bills.

21 MS. GREISMAN: Thank you, Elliot. Let me open  
22 up questions to people here, and I'll ask that you  
23 identify yourself first.

24 MR. KERBER: Yeah, it's Mark Kerber from AT&T  
25 again. A couple of people on the panel advocated a

1 complete ban on third-party billing, and I'm wondering if  
2 you mean that literally or if you mean something more  
3 like what Vermont did and in particular are you talking  
4 about no collect calls, no inmate calls, no direct-dial  
5 toll?

6 MS. GREISMAN: Keith, do you want to take the  
7 first stab?

8 MR. VANDEN DOOREN: Yeah, I don't think that --  
9 I don't want to speak on behalf of my office. I have to  
10 speak on behalf of myself on this one. I don't think  
11 that we necessarily have to ban those. I mean, I think  
12 it would be appropriate to possibly go along the lines of  
13 what Vermont has done in their legislation. But for the  
14 most part, yeah, I want to ban all third-party charges  
15 pretty much.

16 MS. GREISMAN: Anyone else?

17 MR. BREYAUULT: Yeah. You know, I think that  
18 the usage question comes into play here. If you're  
19 thinking about services that you want to ban, I think the  
20 Vermont bill is a good place to start, but I think you  
21 should also look at whether or not these -- if it is a  
22 collect call or operator-assisted service or a third-  
23 party toll charge that's being used, you know, I think  
24 it's incumbent on the LEC to look and see how is this  
25 charge actually being used and, you know, and the LEC and

1 honestly regulators to say is this a service that passes  
2 the sniff test. And if it's not, I think it could very  
3 easily be wrapped into a prohibition similar to what  
4 Vermont has passed.

5 MS. GREISMAN: And I'll add as an additional  
6 point in the Nationwide litigation, those were all billed  
7 as collect calls, more than \$30 million worth, not a  
8 single call had been placed.

9 Other questions? Erik.

10 MR. JONES: Well, just let me make a particular  
11 point about that from what we've seen, as well. So, as I  
12 mentioned earlier, we're not in the phase yet where we're  
13 going to be considering specific solutions, but what we  
14 are seeing, because we're trying to find -- we've seen a  
15 lot of bad actors on the third-party billing space, but  
16 we have -- we have seen some -- there are some legitimate  
17 actors out there, as well. We've seen the -- for  
18 instance, satellite television companies use LECs in  
19 order to place third-party charges on bills.

20 And -- but the one thing that we're seeing is  
21 the LECs and the third-party -- a lot of the third-party  
22 companies are repeatedly telling us that, well, this is a  
23 great benefit to our customers, it's customer or consumer  
24 convenience, they really enjoy having this, and I just  
25 want to point out that we're just not -- we're not seeing

1           that.

2                         And when we -- we've spoken to small telephone  
3 companies throughout the country who have just stopped  
4 doing third-party billing because they could not get  
5 their cramming issues under control, and they're not  
6 getting calls from their customers saying why on earth  
7 did you stop doing third-party billing. I think what's  
8 happening is people are either not aware that it ever  
9 happened in the first place or they're happy they don't  
10 have to deal with the cramming that's occurring on their  
11 bills anymore.

12                         MS. GREISMAN: Sir?

13                         MR. DAVIS: Yes, Tom Davis, senior citizen.  
14 I'd just like to make a comment. I look at this as a  
15 win/win, and the reason I see that, if you eliminate  
16 third-party billing, all of the manpower and the money  
17 that's going into chasing these crooks and prosecuting  
18 and watching them will go away if you eliminate third-  
19 party billing. You'll only have to worry about the  
20 wireless companies after that.

21                         And, plus, all the money you save, all the  
22 homeowners and all the customers are going to save money,  
23 too. So, you can't lose with this solution. And I just  
24 wanted to make that comment.

25                         MS. GREISMAN: Thank you.

1 Other questions?

2 MR. AUGUSTINO: Hi, Steve Augustino from  
3 Kelley, Drye & Warren. I've got a question: There are a  
4 number of the solutions -- virtually, I guess, all of the  
5 solutions -- seem to occupy -- seem to come from an  
6 assumption that consumers either don't read their  
7 telephone bills or don't find their telephone bills very  
8 helpful to them.

9 And, Joel, I know you mentioned in your  
10 presentation that the FCC is looking at improving its  
11 truth-in-billing rules, which require a separate section  
12 for this. So, I'd like to hear from the panelists on why  
13 you think -- why you've sort of given up on the idea of  
14 improving telephone bills or believing that a more useful  
15 bill will help solve this problem.

16 MS. GREISMAN: Joel?

17 MR. GURIN: Well, we have not given up on that  
18 concept, so I'll let someone else answer that.

19 MR. VANDEN DOOREN: Well, let me jump in here  
20 real quick. A couple of things about the bills -- and by  
21 the way, I know -- I haven't been in this the whole  
22 decade, but most of the decade, looking at different  
23 bills from different carriers. And the improvements that  
24 I'm seeing are not what I would consider clear and  
25 conspicuous, meaningful, and, you know, giving consumers

1 a chance to really see this, particularly when the  
2 consumers are not expecting to get charged.

3 I mean, they have no idea that they've signed  
4 up for something, so they're not scrutinizing it line by  
5 line. You got a 15-page bill that comes in and you're  
6 looking through all the lines and usually what I know of  
7 the carriers is that these third-party charges come  
8 towards the end of the bill. So, you got to go through  
9 10, 12 pages of stuff to get there.

10 The third-party charges, I don't know which  
11 carrier does this, maybe they all do it, but they have a  
12 little squiggle. I mean, it's a very fine-point squiggle  
13 that nobody knows what it means until you get to the back  
14 of the bill and you see this third-party charge. I mean,  
15 it's just not workable. And I think, you know, what  
16 Senator Rockefeller said, it's just time to stop the  
17 cramming. It's just -- you got to stop it, period.

18 MS. GREISMAN: Erik?

19 MR. JONES: I can add something, and let me  
20 preface this with saying that this is me speaking and I'm  
21 not speaking on behalf of the Committee. But based upon  
22 what we've seen, I don't think we can disclose our way  
23 out of this problem. The charges are or have been --  
24 they're on the phone bills. I mean, the FCC did truth-  
25 in-billing rulemaking in the late '90s, and the charges

1 are on there if you're looking for them.

2 And as Keith mentioned, if you're a customer of  
3 a telephone company and you don't understand that your  
4 telephone number can be used as a credit card, you're not  
5 going to be looking for random charges in the first  
6 place. And, secondly, comparing this back to the  
7 investigation that we did with respect to the abusive  
8 online marketing practices we were seeing last year, in  
9 those circumstances, the charges were appearing on your  
10 credit card statement or your checking account, and  
11 people still didn't see it. And that's a situation where  
12 people are actually more frequently looking at it to find  
13 new charges because they're using their credit card on a  
14 probably daily basis.

15 So, fixing the problem on the back end just  
16 doesn't -- I don't -- it's probably not going to get us  
17 there to put an end to the problem.

18 MS. GREISMAN: One last question.

19 MR. BREYVAULT: Can I fill up on that real  
20 quick?

21 MS. GREISMAN: Briefly, please.

22 MR. BREYVAULT: Sure. The one thing I would add  
23 to that, as well, is that the problem with relying on  
24 consumers to be checking their phone bills is that not  
25 only does the phone bill remain long and confusing often,

1 but because consumers are increasingly being pushed to  
2 adopt paperless billing, for example, and automatic bill  
3 pay, they have even less incentive to pay attention to  
4 the bill. Most of them just see it as another line item  
5 on their credit card bill.

6 MS. GREISMAN: Last question.

7 MS. GUERARD: Collot Guerard from the Federal  
8 Trade Commission. That was a point I was going to make  
9 that more and more the paper bill is morphing into a  
10 online bill where it's probably even more difficult for  
11 consumers to identify unauthorized charges.

12 MS. GREISMAN: Thank you. And with that,  
13 please join me in thanking our panelists.

14 **(Applause).**

15 MS. GREISMAN: And I ask that you remain  
16 seated. I'm happy to introduce Chuck Harwood, who is the  
17 Deputy Director in the Bureau of Consumer Protection.  
18 Chuck?

19 MR. HARWOOD: Well, thank you very much. I  
20 want to thank in particular all the panelists who are  
21 currently up here and the panelists who have joined us  
22 and participated earlier today in the various panels  
23 we've had.

24 I want to thank the staff of the Federal Trade  
25 Commission and the staff of the Marketing Practices

1 Division and of the other FTC employees who have worked  
2 so hard to put this event on.

3 This morning, we heard about some, you know,  
4 truly impressive law enforcement efforts reflecting  
5 significant commitment of prosecutorial resources. We  
6 heard about states that have brought literally dozens of  
7 cases involving cramming. We heard about some great FTC  
8 cases. In fact, the FTC has brought about two dozen  
9 cases involving cramming, in which the dollar amounts  
10 were in the hundreds of millions of dollars involved.

11 We also heard about criminal law enforcement  
12 efforts. We heard about efforts to deal with problems in  
13 Pennsylvania; and we also heard about instances in which  
14 both criminal and civil prosecutors have worked closely  
15 together to try to deal with the problem of cramming.  
16 You know, in the world of prosecutors and prosecutions,  
17 that's pretty much everything you can get. States, feds,  
18 criminal, civil all working together. They've used all  
19 their resources, and as we've heard over and over again,  
20 the problem persists.

21 As much as I'd like to say we've done it, it's  
22 been taken care of, law enforcement's fixed the problem,  
23 clearly that's not the case here. We heard, for example,  
24 about a recently filed case, the case recently filed by  
25 the FTC, called Inc21. The case is interesting for a

1 couple of reasons. First of all, it demonstrated, again,  
2 that cramming remains a problem. And, secondly, it  
3 demonstrates what I would characterize as the adding-  
4 insult-to-injury problem, that only our consumers, and  
5 I'm going to add and echo a point that Elliot made, that  
6 these are consumers who are not just, you know, your mom  
7 and your dad and you, but they're also businesses,  
8 including some fairly sophisticated businesses.

9 I mean, what we heard about with the insult-to-  
10 injury problem is not only are consumers being faced with  
11 charges that they didn't authorize, charges they didn't  
12 expect to see, but, secondly, they're being charged for  
13 things they don't want and, in fact, are completely and  
14 totally bogus. So, to add insult to injury, they're  
15 being charged for things that nobody in their right mind  
16 could possibly use. We heard just a minute ago about  
17 yellow page charges. You know, that's an insult-to-  
18 injury problem.

19 Now, we also talked this morning a bit about  
20 mobile. And if there's a flashing red light saying  
21 "warning, warning, cramming is a problem here" with  
22 regard to landlines, it's clear that in the mobile arena  
23 it's more of a yellow light. There's a caution sign. It  
24 may be that there is something that needs to be done, it  
25 may not be.

1                   Clearly, there are some important and  
2                   significant features that are involved in the mobile  
3                   world that we don't see in the landline world. I think  
4                   John mentioned one of those, for example, with the text-  
5                   to-donate area, clearly something that has shown itself  
6                   to be highly valuable and much, you know, consumers  
7                   really like that kind of service.

8                   So, while in the landline world, it's clear  
9                   that cramming, unauthorized charges by third-party are a  
10                  huge problem, it's less clear that in the mobile world we  
11                  can safely charge into it with the solution that would  
12                  look anything like what we might do in the landline  
13                  world.

14                 Now, I was also struck by the fact that this is  
15                 not a situation in which industry has sat on its hands.  
16                 Industry has clearly made a significant effort to try to  
17                 address the problem. It has taken steps to detect,  
18                 monitor, and prevent cramming because the industry, too,  
19                 suffers losses when crammers scam consumers. So,  
20                 industry has not -- this is a problem that affects  
21                 industry clearly and directly.

22                 Industry has, in fact, you know, taken  
23                 significant efforts. But given the enormous amount of  
24                 consumer injury and the relative ease with which crammers  
25                 have skirted the steps that industry has taken, it's

1 clear that these efforts have come up short. Crammers  
2 and scammers, which inadvertently I created a rhyme  
3 there, I didn't mean to, have figured out ways to  
4 circumvent these efforts. They've -- the best efforts,  
5 the most creative efforts industry has taken and come up  
6 with so far have not been sufficient to stop the problem.

7 Now, we've talked in the last couple panels and  
8 particularly in this last panel about some solutions that  
9 we should all be considering with regard to how to go  
10 forward in the area of landline cramming. We've talked  
11 about third-party call blocking. What we heard was that  
12 some LECs already offer third-party call blocking for  
13 free in many instances, but consumers don't necessarily  
14 know they can request it or that it's free. And, in  
15 fact, some -- and the clear message there was that  
16 perhaps LECs could be doing more to make their customers  
17 aware of the option. Or they could instead be making  
18 blocking of third-party billing a default option instead  
19 of an option that has to be requested by a customer at  
20 some point.

21 We also heard talk about prior written  
22 authorization, that perhaps LECs should be obtaining  
23 prior written authorization from consumers before they  
24 bill consumers, again, something that probably merits  
25 further conversation and further thinking.

1                   We also heard some talk about better  
2 information sharing among industry players. LECs and  
3 aggregators could do more to share information about the  
4 bad actors in this industry, some people have suggested.  
5 That when one vendor -- or rather when an aggregator  
6 identifies a bad vendor and cuts them off, do those bad  
7 vendors just move to another aggregator or another  
8 billing operation, undetected for quite a while.

9                   We've talked about whether more could be done  
10 to actually exchange information among the LECs and  
11 aggregators to try to let them know, hey, this is a bad  
12 actor, he's heading your way, you know, be on the  
13 lookout.

14                   We talked briefly in this last panel about  
15 something called a Do Not Cram registry. Now, there was  
16 some skepticism. I know John was skeptical of it; others  
17 were skeptical of it. But still that remains an idea  
18 that we might want to contemplate further. A Do Not Cram  
19 registry is somewhat like the Do Not Call registry, only  
20 it involves cramming, consumers basically registering and  
21 indicating they do not wish to receive third-party  
22 billings.

23                   There was a lot of talk throughout the day  
24 about disclosures, whether the disclosures consumers  
25 currently receive in many contexts are adequate.

1 Disclosures on the phone bills, whether they're adequate.  
2 Disclosures at the time consumers initiate their  
3 services, whether they're adequate. Whether the kinds of  
4 disclosures consumers get are meaningful to them. Do  
5 they get information about the vendor that's offering the  
6 service? Do they get information about the service  
7 they're actually purchasing, the price of the service?  
8 Should those kinds of disclosures be listed on a separate  
9 place on the phone bill? Should they be larger, more  
10 prominent? Should they be given at various times over  
11 and over again?

12 Again, there appears to be a lot that could be  
13 done in the area of disclosures and exploring  
14 disclosures. Whether that would be effective or not, I  
15 think, is something we talked about in the last panel,  
16 but certainly it merits further discussion.

17 Finally, we heard some fascinating discussions  
18 about legislative solutions. Elliot Burg talked about  
19 Vermont's new solution that just prohibits third-party  
20 billing, but we also heard some people who I think, by  
21 landlines with some carve-outs, but we also heard some  
22 people, I think, who suggested that maybe that goes too  
23 far. And there was some, you know -- and, so -- but  
24 clearly that's another area that merits significant  
25 attention, significant thought, something we all will be

1 thinking about.

2 So, I want to just close with a couple of final  
3 comments. First, one thing I was struck by today was  
4 there was very little finger pointing. People didn't say  
5 it's your fault; no, it's your fault, which I think is  
6 significant. What I take away from that is a sign that  
7 we've reached a point at which everybody pretty much  
8 agrees there is a significant problem here. And everyone  
9 is interested in engaging in a search for constructive,  
10 meaningful solutions, solutions that are effective,  
11 sensible, and will actually help consumers prevent the  
12 kinds of losses that we heard about today.

13 The FTC wants to be part of that search. We  
14 want to work with the Commerce Committee; we want to work  
15 with the FCC; we want to work with the states; we want to  
16 work with industry; we want to work with consumer groups  
17 to try to find ways to prevent this problem. Because I  
18 think as our senior citizen representative back here  
19 said, really, is it a good -- is it sensible for the  
20 Federal Government and the states to continue to expend  
21 large amounts of enforcement resources on this effort  
22 when there might be better solutions out there if we all  
23 work together at them. So, the FTC wants to be part of  
24 that effort.

25 And, finally, I just want to -- as part of that

1 effort, I want to just mention one final little note. If  
2 you are listening to this or hearing about this or if  
3 you're here in the room and you have additional comments  
4 about things that we could do, we would love to hear from  
5 you. You can file comments on the public record for this  
6 event through May 31st, and we'd love to get your  
7 comments, your suggestions, expand on what you've heard,  
8 criticize what you've heard, but let us know what you  
9 think we can do with regard to cramming. We'd much  
10 appreciate it.

11 And with that, I think we're done. I thank all  
12 of you again for being here today.

13 **(Applause.)**

14 **(At 4:10 p.m., the workshop was concluded.)**

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