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MS. GAINEY: Good morning, everyone.

AUDIENCE: Good morning.

MS. GAINEY: Welcome to the cramming forum. My name is Shameka Gainey. I’m an attorney in the Division of Marketing Practices here at the FTC. We’re delighted that you’ve all decided to join us today.

For the past year, we have been reaching out to other government agencies and industry and reviewing our own internal complaint data base to examine potential abuses of the telephone billing platform. And our goal today is just to have an open discussion on the ways that we can prevent cramming.

There will be four panels today that will touch upon some of the issues that we think are important. And we invite everyone to think carefully about these issues and possible solutions and to submit comments on them.

In your folder, you will see several note cards, and you can use those note cards to write down your ideas for possible solutions, and then you can place those cards in the back of the room in a box. There’s no box there right now, but there will be later. And then we’ll use those ideas that you’ve submitted in our discussion in the fourth panel today.
We also want to remind you that we’re still accepting comments, so you can submit those comments via e-mail at ftc -- the crammingforum@ftc.com, and you have until May 31st to do that.

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

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

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

In the event of a fire or evacuation of the building, please leave the building in an orderly fashion. Once outside the building, you’ll need to orient yourself to the New Jersey Avenue.
street from the FTC is Georgetown Law Center. Look to your right of the sidewalk, and that’s where we’ll all be meeting. Everyone will be gathered by floors. You’ll need to check in with the person accounting for everyone in the conference center.

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

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

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

At this time, I’d like to introduce our Director of the Bureau of Consumer Protection, David Vladeck.

(Applause).

MR. VLAD ECK: Shameka is a tough act to follow, but good morning. Welcome to the FTC conference center for a workshop: Examining Phone Bill Cramming, a Discussion. As Shemeka said, I’m David Vladeck, I direct the FTC’s Bureau of Consumer Protection. These remarks
are my own. They shouldn’t be attributed necessarily to the Commission or any individual commissioner.

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

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

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

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

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

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

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

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

But to evade these restrictions, the crammers created new dummy corporations with strawmen officers and
bogus addresses and used them to continue submitting their bogus charges to the phone companies. The ease with which these scams were perpetrated suggests that industry and law enforcement must do a better job to keep bad actors off the telephone -- telephone billing platforms.

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

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

We will have four panels, each focusing on a particular aspect of the cramming problem. Our first panel will look at how cramming occurs and the nature and
scope of the injury it causes to consumers. The panelists will examine the ways in which unauthorized charges are placed on the telephone bill and the goods and services that are purportedly being billed and the injury caused.

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

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

Finally, our last panel will brainstorm to find
potential solutions to enable industry, consumers, and law enforcers to better prevent, detect, and reduce telephone bill cramming. Panelists will discuss specific initiatives at the state level and related ideas, such as allowing consumers to request a block on all third-party billing, requiring third-parties to get written approval from consumers before placing charges on their phone bills, and improving disclosure of third-party charges to consumers.

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

Indeed, Congress itself is watching this forum. We got a letter last night from the Chair of the Senate Commerce Committee, Senator Rockefeller. I want to just read you the first paragraph in a six-page, single-spaced letter. Senator Rockefeller writes, “I applaud the Federal Trade Commission’s decision to hold a forum on
unauthorized, third-party charges on telephone bills. As you know, the practice of placing unauthorized, third-party charges on telephone bills, commonly referred to as cramming, is a problem dating back to the 1990s. For far too long cramming has cost consumers and businesses both time and money as they have faced a seemingly endless string of bogus third-party charges on their landline telephone bills. It is time we put an end to this harmful practice.”

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

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

(Applause).
SESSION 1: CRAMMING -- HOW DOES IT HAPPEN AND
WHAT IS THE INJURY?

(Telephone ringing).

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

(Laughter).

MR. DEITCH: Good morning, everybody.

AUDIENCE: Good morning.

MR. DEITCH: Good. Let’s try that again. Good
morning, everybody.

AUDIENCE: Good morning.

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

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

There are generally four parties involved in
the landline telephone billing system. The first is a merchant or a vendor; the second is a billing aggregator; the third is called the local exchange carrier, or LEC, which means basically a phone company; and the fourth is a consumer. The consumer can be an individual; it could be a small business; it could be any business.

What happens is a vendor submits a charge to the billing aggregator. The billing aggregator submits the charge to the LEC or phone company, and then the charge is placed on a consumer’s bill and sent to the consumer. The flow of money goes in the opposite direction. The consumer pays funds to the LEC or telephone company; funds go to the billing aggregator; and then funds go to the vendor.

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

We’re also going to be talking a lot about cramming. You’re going to hear the word “cramming” over and over again. So, I thought it would be helpful to give a working description before we get into the panel. Again, this is for panel one, this description. And it’s
one way of looking at cramming is causing unauthorized
charges for a variety of goods or services to appear on
consumers’ telephone bills. So, now when you hear the
word at least you’ll have some general idea of what it’s
meaning, and our panelists will put it more into context
during their talk.

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

Our second speaker is Diane Dusman. She’s a
senior assistant for the Pennsylvania Office of Consumer
Advocate. She has been a member of the Consumer
Protection Committee of NASUCA, which stands for the
National Association of State Utility Consumer Advocates.
And she’s been there since 2003. She’s also facilitated
a sub-committee of state telephone advocates from 2005 to
2010. She received her JD degree from American
University here in Washington, DC.
Our third speaker -- our third speaker is Craig Graziano, who is attending by phone. Craig, can you hear us?

MR. GRAZIANO: I can.

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

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

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

MS. BLACKSTON: Can you all hear me? Good morning. Thank you for giving me the opportunity to speak today. As Russ mentioned, my name is Beth Blackston. I’m an Assistant Attorney General in the Consumer Fraud Bureau at the Office of the Illinois
Attorney General. Over the years, the Office of the Illinois Attorney General has filed 30 civil law enforcement actions against alleged phone bill crammers. And the FTC and the states have brought numerous cases over the years against both vendors and aggregators.

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

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

So, and we’re still receiving cramming complaints. We started receiving them probably in 1996, ‘97, and they really took off, and then they kind of quieted down for a couple of years, but in recent years, we’ve seen the trend upward again. And we continue to see phone bill cramming complaints.
So, one of the questions that this panel is to answer is how does it happen. So, I thought I’d go -- we have the same question, whenever we receive cramming complaints, and whenever we open an investigation of a particular vendor, what we do is we send a pre-suit subpoena to the aggregator and request marketing information, among other things, from the aggregator for the vendor for which it’s billing.

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

And our experience has been that one of two scenarios applies. Often, we see a -- what we construe to be a deceptive and untaped sales pitch, followed by the taped verification conversation. And another scenario we’ve seen is some cases we don’t even believe that the verification or the telemarketing actually took place. And the reason we think this is because whenever we request information from the company when someone has complained to us, a lot of times we’ll be provided with the name of -- in the case of a small business, we’ll be
provided with the name of someone who never worked for
the company, or in the case of residential customers,
sometimes the customer will listen -- the consumer will
listen to the recording and say, that’s not my voice, and
we can tell from talking to them on the phone that it
isn’t their voice.

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

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

Are you still called such-and-such business at
such-and-such address with this phone number? And just
to confirm, your name is so-and-so and you’re the
receptionist, okay, great, because you already have a
listing with us, there is no charge, we just want you to try the premium listing for three -- 30 days for free so that potential customers can find you first.

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

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

Another marketing method that we’ve seen, this is kind of from several years ago, and I don’t really think it’s happening anymore, but it’s worth mentioning. We had a cluster of cases that we did where consumers would have these charges show up on their bills and they
had no idea what it was for. And we would contact the
company and the company would claim that the consumers
called a 1-800 number and requested the service. And the
consumers that we talked to didn’t recall having done
this and denied all knowledge of it.

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

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

We also have seen, and this is now illegal in
Illinois and I believe in other states, sometimes the
written LOA would be a sweepstakes entry form. You can’t
do that anymore, but people would think they were
entering a sweepstakes and fill out the form and provide
their phone number, not realizing that it also was
authorizing some kind of telephone billing. And even
consumers who have knowingly filled out the sweepstakes
entry forms, they don’t understand that they’ve made a
purchasing decision by doing that.

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

Now, what seems to be the common method now of
marketing is online marketing. And I guess that’s kind
of the equivalent of a letter of agency. Theoretically,
you can sign up for a telephone-billed product or service
at a vendor’s website. And, in fact, when we subpoena a
billing aggregator and ask for what kind of marketing
materials their clients are using they’ll often give us
the home page of the vendor. And you can sign up for the
service on the home page, and there’s a place to enter
your information. But we don’t think that’s what
consumers are doing.

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

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

Another question, what kind of goods and
services are billed? We just kind of went through and
pulled out different kinds of things we’ve seen in
c consumer complaints over the years: voicemail service,
internet service, website design, search engine optimization, regular horoscope, voicemail messages, a cell phone warranty, which shows up on your phone bill as internet service, but it’s actually supposed to be a cell phone warranty, prepaid calling cards, and online yellow pages listings.

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

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

No consumers that ever complained to us ever say that they’ve used the product for which they were billed. And, again, like I mention, they sometimes think
they’re agreeing to a free trial or agreeing to receive
written information about the product and that they have
to take some action in order to be billed.

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

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

So, some examples. One case, we had 2,527
consumers that were billed nearly $36,000. In one case,
we had over 23,000 billings for a total of over $466,000.
One case we had 25,000 billings in an eight-month period at between $35 and $44.95 per billing for a total of anywhere from $875,000 to over $1.1 million.

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

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

It seems that everybody on the billing side could do a better job of knowing their customers and how they are marketing based on some of the responses that we get. And, honestly, this is just my personal opinion, I
don’t see the problem going away without a legislative fix, and a legislative fix that goes beyond requiring authorization and verification, because that’s already required now, and we’re still seeing problems. Thank you.

Bear with us. We’re having technical difficulties.

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

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

This title just plays off of the -- that much of the cramming that we see appears to have to do with internet use of some sort or visiting a site, and I’ll show an example of one extreme case that we investigated a few years ago. As we’ve heard already, sometimes when
a consumer complains about cramming it’s virtually impossible to find what the root cause of that charge is, and as we’ve seen with the Inc21 case, apparently sometimes consumers do nothing at all to lead to the charge, it’s a fairly random thing.

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

Cramming is on the increase in Pennsylvania, judging by first quarter reports, although of course we see that whenever cramming shows up in the news a lot, we tend to get more complaints, obviously because people see that others have been ripped off and they start looking at their own phone bill. There is an increased vigilance when it gets into numbers, which is why we’re grateful for this kind of opportunity to bring it onto the public light. And we have also cooperated with Senator
Another example that you’ll see -- we found destinations on these bills that we really didn’t even know existed. It was quite a lesson in geography. But you can see $2,172 is going to get your attention on a phone bill.

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

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

So, it was clear to us that crimes were being
committed. In Pennsylvania, we have several laws that we can draw on, but our primary one is our specific regulation that prohibits cramming on the phone bill that was enacted by our Public Utility Commission. But, of course, we also have the Unfair Trade Practices, our little FTC act, to draw on, and the case of the unauthorized international charges, we also asserted that it was a form of identity theft because use of personal identifying information in Pennsylvania for illegal purposes is a form of identity theft.

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

Now, when we went to the website that the customer service rep told us about, this was one of the first things we saw, an entire screen full of disclosures, and if this works the way it’s supposed to, you see at first the word says “I accept.” And this was some sort of pornographic website which of course we’d been meaning to check it out, it drove our IT people
crazy, but we said, hey, it’s an investigation. So, here’s the (inaudible) language, you accept that you will be charged and pay $2.99 per minute along with a $1.99 charge for the actual long distance connection on your local phone bill by TELUS Billing. So, that was supposed to be the disclosure that led people to know they were going to be charged.

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

(Laughter).

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

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

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

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

Our settlements are not limited to monetary relief. We also have consumer education components,
education of customer service reps about the problem,
what they should be telling customers on how to avoid the
problem, and reporting requirements on what the companies
have done, you know, compliance effort, which is pretty
typical.

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

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

And I am asking the question whether we can
borrow from other industry practices on prevention of
cramming. In other words, in my personal experience and
with some of the smaller companies in Pennsylvania, I’ve seen that they have systems in place where they -- and I call it aberrant charge kick-out, if they have a bill that goes through that shows a far higher level of usage then the customer has ever had before or a charge that is really anomalous compared to the customer’s prior billing pattern, they’ll kick it out and make a specific call to that customer saying, hey, we’ve noticed a change in your bill or a charge that’s extraordinarily high, can you verify for us that you actually made this charge. And they put their customer service reps to work on that sort of issue. So, can we look to other industries for possible assistance in determining information?

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

The charges, unlike the huge unauthorized long distance charges we saw earlier, are now, as we know, very small charges, a lot easier to overlook on a bill, and they appear up to six months. And people still have a problem, even with our reg in place and with all the
publicity about this, people still report that they get
the statement from a customer service rep, it’s on your
bill and you have to pay it, or you have to go to the
initiator of the charge. And as we’ve seen, the
initiator of the charge is not necessarily reachable, for
one, and not necessarily cooperative in resolving the
dispute.

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

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

Craig, take it away.

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

MR. DEITCH: Yes.
MR. GRAZIANO: Okay, if there’s any problems
with audibility, please -- please interrupt me.
I first want to thank the Commission for
convening this forum, for inviting our participation, and
for its body of work over the years in combating the
problem. Decisions like Inc21 and Verity before it are
an enormous help to those of us in the states who are
fighting the same battles.
Again, I’m with the Office of Consumer
Advocate, Iowa Department of Justice. Our offices have a
steady enforcement effort in place on cramming and
slamming for nine years. We submitted some written
comments. What I thought I would do this morning is
scratch the surface, because that’s all I have time to
do, regarding the types of complaints we have seen and
then say a bit about our enforcement effort.
Our statute authorizes the State Utility Board
to assess a civil monetary penalty up to $10,000 for a
violation. The statute itself doesn’t use the term
“cramming.” It used the term “unauthorized change in
service.” And on the definitions, I’m only going back to
a comment our consultant made during our rule-making
proceeding years ago. She said, “The key point is to put
in place a -- is to put in place a set of rules that will
cause a fraudulent, unfair, and deceptive practice. We
can call it slamming and cramming and whatever we want, but when you (inaudible) class it (inaudible) fraud, trying to get people to pay for something they haven’t, in fact, bought. Our statute excludes wireless services. As a result, virtually all of our experience has involved wire-run service. Wireless complaints in Iowa are addressed by another division of the State Attorney General’s Office using the Consumer Fraud Act. Over the years, our office has seen complaints involving allegedly unauthorized services for long distance services, collect calls, directory assistance, calling card services, repair services, voicemail services, web hosting services, and online yellow page services, among other things.

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

Several years ago, we saw many modem hijacking
claims in which hackers would place calls from a consumer’s computer, often to pornographic websites at remote locations on the globe, then succeed in having the considerable charges show up on the local phone bill.

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

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

It is difficult for consumers to remember the details of a telephone conversation that occurred months ago (inaudible) remember enough to make a credible
complaint. We’ve seen numerous complaints alleging other
types of deficiencies in the third-party verification
process. Sometimes the person whose name is given on the
recording as having authorized the charges turns out
never to have worked for the small business being billed.

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

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

The other category of complaint I wanted to
highlight involves allegedly bogus internet signers,
again for services billed to the local phone bill. I
wanted to start on that one with a flashback to 1998 and
1999 when the U.S. Government Accountability Office, then
known as the General Accounting Office, issued a couple
of reports on cramming and slamming. These reports
expressed dismay that unscrupulous providers can use deceptive marketing practices, including deceptive contests and surveys, to lure consumers into providing authorization.

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

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

There is rarely evidence explaining what happened. Occasionally, there are telling clues. In one case, it appeared the phone number the company claimed
that the consumers replied as part of the alleged order had not been the consumers' phone number for 17 months.

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

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

In terms of solutions, and I’m talking now about all of these claims, our office looks to the civil monetary penalty. Over the past nine years, we have filed hundreds of petitions against scores of companies seeking civil penalty for alleged cramming and slamming violations. The vast majority of these cases have been on terms including the civil monetary penalty. Our filings have represented only a fraction of (inaudible).
With respect to our efforts to secure the penalties, companies often tell us we issued a credit, this is not a lot of money, you should let it go. We’re not often persuaded. What is not a lot of money in any one case may be quite a lot of money in the aggregate. In 2005, for example, I think 11 Iowans, each disputing $5 and $8 for a single domestic collect call lodged complaints against two billing companies.

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

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

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

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

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

Artful operators are free to use multiple corporate entities in order to mask the scope of their operation. They are free to move from one corporate shell to another once complaints start to gain the attention of regulatory officials. There are also practical difficulties associated with pattern cases.
As the Federal Communications Commission once said with respect to planning, our experiences demonstrate the vital -- the vital importance of foreclosing potential sources of fraud before they become a major subject of consumer complaints.

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

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

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

Thank you again for the opportunity to share these observations.
MR. DEITCH: Thank you, Craig.

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

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

Giving, again, a little bit of the background, the FTC’s case began in the early 2000s, as we saw the emergence of cramming take place. We brought a case against Mercury Marketing and Neal Saferstein, alleging that the company was misrepresenting that consumers had
purchased services. And they stipulated to a consent agreement and agreed not to bill without authorization. Unfortunately, they continued their practices unabated.

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

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

The product was an internet web page which was purportedly offered to help small businesses raise their internet presence. Remember, this is back in the early 2000s. You’ll note they did not just pick on small
businesses, because Skadden is an international law firm, certainly is not a small business.

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

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

And the pitch would go something like, “I just want to send you a package in the mail. I need to speak to somebody with authority. Are you the business owner? Are you the manager?” And usually the representative will say, “No, I’m not, but what is this about. If it’s just to send a package in the mail, I can accept the package.” “Oh, you do have authority to accept the
package, then, or the service. Right, okay, well, I just need you to verify some information, then.”

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

So, again, something seemingly innocuous.

Again, as my colleagues have said, usually not a memorable conversation. Most of the consumer victims that we talk to don’t have a recollection of that introductory call and, in fact, I would argue, this is my personal view, that it is because the call is not intended to be memorable. And only the back end conversation is recorded, so there is no -- there’s nothing to replay about how they got to the verification of their name and telephone number.

In the Saferstein and the GoInternet matter, there was a double layer of fraud in that Saferstein directed his vice president of customer service to also create fake verification tapes when necessary. So, after they had tricked the consumer into agreeing to accept the
products and services, when necessary he would also help to fabricate the evidence supporting the sale.

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

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

And another thing that I would point out is GoInternet used a sub-domain rather than a domain, so you can see -- it might be hard to note -- but at the top here, the web address is myiformation.com/skaddenandarp. All of the web pages were hosted behind the name.
information or internetweb, which is the domain name that
GoInternet used. And they did not register any of these
web pages. So, unless the customer knew the exact web
page address, they weren’t going to find it when they
searched for it on the internet.

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

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

I’ll show you another example of a mistake-
ridden web page. You might recognize this company -- Al
Jazeera. It appears Mr. Al-Jazeera sells televisions.
But most of you may recognize Al-Jazeera as an Arabic language broadcasting company. And Al-Jazeera paid for several years before recognizing that they were billed, as did law firms, as did churches. I can tell you about some web pages that I saw where the business hours for the churches were listed as Monday to Friday, 9:00 to 5:00, accept Visa and MasterCard.

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

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

So, with that in mind, he represented that the product that -- that Mercury was selling or GoInternet was selling was internet services, because that was
permitted as a line item on the LEC bill. And they did
offer dial-up service and e-mail, but their main business
was this web presence through the web pages.

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

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

And they would call the 800 number listed.
GoInternet went through aggregators, so there was always
a third-party contact first. They would contact the aggregator, who would say you need to contact GoInternet directly. GoInternet would promise a credit or refund and then wouldn’t issue it. So, there were attempts to thwart the credit or refund getting back into the consumers’ pockets.

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

I think that the GoInternet matter is a good example of the great cooperation amongst the states and several law enforcement agencies, along with the U.S. Attorney’s Office, the FTC, FBI, Postal Inspection Service, and IRS worked together to bring this matter to conclusion, but I must say it took 10 years from start to finish. That’s a long time and a big investment to finally put an end to this particular bad actor’s
I’m trying to look through my notes to see if there’s anything else Jennifer would want me to highlight to you. And I might ask if there are any questions that anyone has as I’m looking through about the scheme.

Sure.

UNIDENTIFIED SPEAKER: (Inaudible).

MS. BUNGO: If I were the consumer?

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

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

Thank you very much.

MR. DEITCH: We’re going to open this up to questions in general. Thank you for your question. It’s actually a chance to preview the fourth panel, where
there’s going to be a discussion of potential solutions for people to discuss. Are there other questions for people? Yes, sir?

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

MR. DEITCH: Right.

MR. MCGLAMERY: They didn’t even bother telemarketing or anything else. And I thought it was kind of interesting. We also found in another case the surveyor, oh, would you please answer this survey real quick. And there was never anything in the survey indicating you were signing up for a service. You just (inaudible) name, address, these things, telephone number and that was the end of that. And the next thing you
For the Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

know, you’ve got a bill.

MR. DEITCH: And could you, for the record, could you state your name and the organization you’re with?

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

MR. DEITCH: Another preview. Yes?

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

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

I will say for one of our first round of cramming cases we negotiated and settled several of them at the same time, and the checks were cut for the
separate cases from the same person. And we did not know that they were connected.

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

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

MR. DEITCH: Anybody else have --

MR. GRAZIANO: This is Craig. In Iowa, the key thing we would recommend is simply to file a complaint with the Iowa Utility Board. The Utility Board is good about getting refunds for consumers when they deserve to have refunds. And that also gives our office an opportunity to evaluate what the consumer says and what
the company says and whether -- whether a civil penalty proceeding should be instituted.

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

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

MR. DEITCH: Sir?

MR. MENJIVAR: Roberto Menjivar, FTC Chicago.

As more consumers switch to mobile devices or wireless devices, are the states seeing an increase in complaints related to unauthorized charges to a consumer’s wireless device and how are those complaints being handled? I think Iowa mentioned that they have a separate division that deals with wireless.
MS. BUNGO: Can you repeat the question for the record?

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

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

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

MR. BREYVAULT: Hi, I’m John Breyault with the National Consumers League here in Washington. A question for the panel but particular to Illinois AT&T filed comments prior to this (inaudible) for this workshop that laid out a pretty significant verification process that they used to try and work with aggregators and third-party billers, the third-party certifiers that use the aggregators.
In your experience in prosecuting these cramming cases, did you find that AT&T or other (inaudible) carriers with (inaudible) similar verification programs, that those were effective or what was your experience in how they used those systems without cramming?

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

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

MR. DEITCH: And to better answer your question, we have panel two coming up next. Thank you for the transition. It will be what steps does a telephone billing industry take to detect, monitor, and
prevent cramming. So, with that, we can take a 15-minute break. Thank you.

(Applause).

MR. DEITCH: Thank you, panelists.
SESSION 2: WHAT STEPS DOES THE TELEPHONE BILLING INDUSTRY TAKE TO DETECT, MONITOR AND PREVENT CRAMMING?

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

We are resuming the forum with panel two. This panel will address what steps does the telephone billing industry take to detect, monitor, and prevent cramming.

And for the record, I’m Larissa Bungo, and I will be the moderator for this panel. And I’m going to do a brief introduction of our distinguished members of the panel, and then I’m going to ask that Kent begins. And then Don Teague, who is patched in by telephone, will follow Kent.

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

His past experience includes leading programs to implement third-party billing process. He also directed the conversion of AT&T to a single bill across all of AT&T to simplify the bill, to reduce pages, and to comply with the truth-in-billing requirements. His current responsibilities include product management
oversight and strategy for third-party billing, including
the development and implementation of anti-cramming
safeguards.

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

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

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

We have three representatives from the law
enforcement side, beginning with John McGlamery. John is
a Senior Deputy Attorney General for the Bureau of
Consumer Protection in the Consumer Advocate’s Office in
Nevada. His primary duties involve the prosecution of
deceptive trade violations, but he assists in utility-related actions on behalf of the Consumer Advocate.

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

MR. MCGLAMERY: A little bit of everything.

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

Rich’s cases have included criminal cramming matters prosecuted in the United States District Court for the Southern District of Florida. And in December
2006, Rich was awarded the FTC’s Criminal Liaison Unit Award for cooperation with the FTC in the enforcement of criminal laws. Rich received his B.A. *cum laude* from Hobart College and J.D. with honors from the University of Maryland School of Law.

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

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

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

As you can see, we have a great panel here, and we look forward to hearing their comments and then opening up for comments from the audience. I will note that when we get to the comment and question-and-answer
portion, if you could hold your question until a mic comes to you and also identify yourselves so it can be, please, put on the record. But with that, I’ll turn it over to Kent.

MR. WARDIN: Thank you, Larissa.

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

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

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

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

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

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

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

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

Limits on certain services, normal billing for no accounts for e-mail, voicemail, web hosting, internet directory, until we need to get our program set up, these
were four problem areas that we saw so we suspended billing until such -- it’s often for reconsideration of these anti-cramming measures that were put in place, proved to be successful. So, right now, at AT&T, none of these four products are billable. And it was certain in the first quarter of 2010 most of those were in effect that way. Okay?

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

We also have a double opt-in process for internet transactions. Self-help websites for consumer inquiries, clearinghouse obligated to actively oversee service providers, annual audits of clearinghouses and performance, cramming complaint fees, and maximum cramming complaint thresholds. Okay. And we’ll go into selected anti-cramming measures in more detail right now.
Our verification requirements, all transactions, minimum baseline verification requirements for all transactions, some similar to the existing letter of authorization. Third-party verification requirements for regulated telecommunication services. Internet transactions are heightened verification.

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

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

So, after the sales and marketing and you
agreed to this product, what this -- what we’re trying to
do here is eliminate people that just were just trying to
get additional information to realize that they made a
purchase by hitting the button, thinking that they’re
going to get incremental information.

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

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

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

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

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

Sorry about this. Cramming complaints, fees, maximum cramming complaints and thresholds. We charge a — we assess $150 fee per cramming dispute. Maximum cramming complaint thresholds apply to each clearinghouse and service providers. Complaints cannot exceed .75 percent of bills rendered per month in any AT&T Telco region. AT&T may limit, suspend, terminate, bill if the clearinghouse or service provider exceeds the threshold.
Typically we’ll get a performance review, see how they’re doing and give them a couple months to reduce complaints and/or if they cannot, they’re terminated from our service.

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

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

What-else data is constantly changing. We have to be always looking at the data and may need to modify our program as we go forward, and that is the purpose of the audit and the purpose of working with the DOJ and the
FTC. And as we get more information as we forward, this is a modified thing.

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

MS. BUNGO: Don, we’ll turn it over to you.

Don is patched in by telephone. Are you able to hear us, Don?

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

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

The three major reasons that I really volunteered to be involved here was that, number one, consumers need to be protected with standardized and proven validation and authentication. The true cramming needs to be addressed. That sounds like the FTC is serious about addressing it, which is perfect. A lot has changed in the LEC world since the LEC and the internet
have come together. And I think clearly the industry has struggled to keep up with those changes, and I believe that MORE can assist with creating some standards to test. I don’t know that the optimum solution is known here today, but I think that we need to test a few things to get to that silver bullet.

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

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

In terms of, you know, things we’ve done, seen, or can recommend to address the issue, I think the telemarketing one is the easiest probably to address. The telemarketing B2B cramming I think can be resolved by the sheer fact that disk space is so cheap today, I think this was recommended earlier, and I agree, that 100
percent of telemarketing calls should be recorded and stored and made available to whatever enforcement agency, phone company, processor wants to see them alone with the third-party is a fair indication. I think that’s a slam-dunk for solving the cramming associated with that piece of the industry. I think the real opportunity for improvement is in the cramming associated with the online -- online sign-ups and online registrations.

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

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

I think that AT&T certainly has stepped up to that. I think what we need now is a set of standards
that is ubiquitous across all of the phone companies in order to make this work. Now, whether or not the solution we used back then of name, address, phone number, date of birth is the right one, I think others need to be tested.

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

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

MS. BUNGO: Thank you very much for your
comments, Don. And we turn over to John McGlamery.

John?

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

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

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

And each of these corporations was set up in Nevada, which is unfortunately the haven for every scam that came along because our good legislature doesn’t
require much of anything to set up a corporation. In fact, you don’t even have to identify the true people involved. You can set up proxies.

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

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

And why would they do that? Well, when we started investigating these, we found that they were intentionally looking at the threshold processes from the LECs. And they would start billing for company number one until the threshold was met. And then they would rotate to number two until the threshold was met. And then they’d rotate to number three until the threshold was met.
We don’t know how many dollars we’re talking about nationally, but we know that in Nevada, which is one of the smaller states, we had $600,000 in bills for a period of eight months. That’s an awful lot for a small state. And not one of the people we’ve contacted had any idea what they were getting.

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

So, the verification processes up until about a year, year and a half ago, are simply not sufficient. There’s got to be something more. We -- I’m a big advocate that they should just do away with third-party billing through the LECs. I mean, it was intended years ago when the first Ma Bell broke up to allow these companies that were providing these other services to get
onboard. Today, it is just nothing but a haven for
scammers. And I have yet to see any evidence that third-
party billing through the LEC billing is needed, except
for scammers who are making off with all kinds of money
on this thing.

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

So, we’re looking forward -- I haven’t had any
chance to use it yet, but we’re looking forward to it,
because if we see another one, we have a nice criminal
racketeering charge to bring forth. You know, these are
the kind of things, tough remedies, make it -- another
thing is they try to do all of their business over the
internet. By Nevada law, you’re supposed to have a
written confirmation notice sent to the consumer at his address. In none of these cases did they do that. They say, well, we just sent it to the e-mail. Well, what’s their e-mail? And it’s completely wrong. There’s no contact with the consumer whatsoever.

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

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

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

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

MS. BUNGO: You do.

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

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

(Applause).

MS. BUNGO: We’ll hear from Rich next.

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

My name is Rich Goldberg. I’m an Assistant Director with the Office of Consumer Protection Litigation of the Department of Justice here in Washington, DC. We do all kinds of consumer fraud cases. We do civil cases; we do criminal cases. And as of 2009, mid 2009, I had never heard of cramming before, until I talked to the FTC’s criminal liaison division, which does an excellent job of referring criminal cases to U.S.
And I was told of a case in the Southern District of Florida that the FTC had brought in which it was clear that the individual had acted with an intent to defraud. And we, again, we get a lot of referrals from the FTC, and generally speaking, there is a pretty significant amount of work that we need to put into the cases over and above what the FTC puts in on theirs. But I was told that this was pretty much a slam-dunk.

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

And the FTC had brought a case and had seized a lot of the assets that he never got to enjoy because he was in jail. But they include mansions, two huge mansions in south Florida. They included a lot of different kinds of very fancy cars. I’m not a car guy, but if you are, you’d be very impressed with the cars that he got. He got yachts. Again, none of this was he able to take advantage of because he was waiting to get
out of jail to take part in enjoying the fruits of this fraud that he had committed.

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

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

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

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

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

So, this is not something that we can say here’s a solution and then say, okay, this is going to solve the problem for here on out. As long as there is LEC billing of these sorts of third-party services, there will be scam artists trying to take advantage of it and coming up with effective ways of putting fraudulent charges on people’s phone bills. So, it takes vigilant
law enforcement, but also a significant amount of effort on the part of third-party -- on the part of LECs and others in the industry to make sure that this problem is addressed.

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

MS. BUNGO: Let’s here from Laura Kim.

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

And his mother, Mary Lou Farr, who we sued, profited handsomely from this. She received millions and millions of dollars, and after we had settled with her, you can imagine my surprise when about a year later I got a call from her saying you’ll never believe what happened
to me. I’ve actually been crammed. I just got a bill with a $65 charge that I never -- I never authorized. How can this be happening?

(Laughter).

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

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

Turning first to the aggregators, there are two specific roles that the aggregators play that I think make them well positioned to be doing more to stop cramming. And the first is that the aggregator is the gatekeeper charged with responsibility for screening out the bad actors. As we all know, it’s the aggregator who
has a direct contract with the vendor. And the LECs, not being in a direct contract with the vendors, rely on the aggregators to screen out bad actors.

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

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

Are we asking questions? Are the aggregators asking questions about whether the information on the application form points to connections with terminated companies? We know time and again we see vendors reformulate into a new company. It’s not really new; it has a new name; it might have another person listed as an
officer. But they might be using the same customer service number. They might be using the same customer service vendor. They might be using the same P.O. box. These are all things that can point to connections with terminated companies, and you have to ask, are the aggregators doing enough to draw those links.

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

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

So, in Nationwide, the purported service was collect calls. And there were many, many complaints of the nature “I never could have received this collect call because the phone line that was billed was connected to a
modem.” Or “I never could have received this collect
call because this phone line is connected to a fax
machine.”

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

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

First, I think LECs can and have to do more to
educate their consumers about the fact that third-party
billing exists. Many consumers who complain to the FTC,
including those who filed comments for this forum,
expressed outrage and shock that this even can happen.
And as our history of law enforcement makes clear,
cramming is a profitable scam because literally tens of
millions of consumers never know that they were even
charged. And in Inc21, for example, the court found that
only 5 percent of the consumers in that tens of millions
of dollars of fraud even knew that they had been billed
for Inc21 services.
So, even if the number of cramming complaints that a LEC receives might be small, it’s hardly surprising given the vast number of consumers who may not even know that they’re being billed at all. And, so, as the entity in direct contact with the consumers, I ask whether the LECs can do more to ensure that consumers know to look at their bills and examine them for cram charges. And, similarly, the LECs are the ones in the best position to be able to educate their consumers that the option of third-party bill blocking is available.

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

And, third, what are the LECs doing to share information that they already have with their counterpart LECs, to ensure that terminated vendors are not reincarnating and regaining access to the billing
platform under a different name? Nationwide with Willoughby Farr, he had actually been terminated with the prior incarnations of companies that he had before Nationwide. So, again, what are the things that the phone companies can do to share information with their counterparts to make sure that this does not happen again? Thank you.

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

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

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

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

MS. BUNGO: I might ask if the industry representatives would like to speak to this? Kent or Don? Are there forms of legitimate third-party billing is the other way of asking this question, and what would
MR. WARDIN: Yeah, I think there’s --

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

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

MS. BUNGO: Thank you, Don.

Kent, would you like to offer your comment?

MR. WARDIN: Yeah, I was going to echo that identical type of comment, that there are quality third-party services that are offered. We’re here, you know, for myself, if a customer does get crammed and because I
have a lot more to lose with respect to the services that
AT&T offers in the vertical and the substitution, so it
does not do me any good to try to promote any of this
type of activity. I mean, it’s clearly not in AT&T’s
interest. But, yes, we do believe that this is an option
that’s available to consumers that is -- that’s wanted by
them.

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

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

MR. WARDIN: Yes. I’ve seen approximately the
same similar thing, about a 70 percent reduction. So,
all those data elements have been tracking very closely,
meaning number of third-party billing calls coming in to
our centers, number of cramming complaints, number of
escalating complaints, and then the percentage I’m
actually at .14 for March, so it’s even going down lower as we -- as we’ve been going along here.

MR. Breyault: Thank you.

MR. Wardin: Yep.

MS. Bungo: Is there another question in the audience? I’m coming.

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

MR. Wardin: No. No, not for -- new accounts for certain products? Is that what you’re saying?

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

MR. Wardin: That’s -- no, that’s not correct.

MS. Bungo: It might be about the certain industries, you weren’t accepting charges for certain types of --

MR. Wardin: We -- yeah, we suspended voicemail, e-mail, February; eDirectory in April; and web hosting in May. Based upon how the third-party
improvement plan is being and how effective that is, we’ll reconsider bringing those back on. But as of today, those are currently suspended, meaning that they cannot add new customers.

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

MR. WARDIN: No --

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

MR. WARDIN: New acquisitions I’m not allowing. New sales.

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

MR. WARDIN: The third-party bill block has to be done via our AT&T website. The other website that you’re speaking of is actually maintained by the clearinghouse, the aggregator, or the service provider themselves. That’s where they can request the specific charges, and it’s multiple months, and it wouldn’t have to be the current month that they’re in, to be recouped back to them and get the appropriate adjustment. That is
printed on the bill, the telephone bill, in the section where the charges -- right below where that charge appears. So, it’s -- they’re kind of sorted together. It’s a text message that gets sorted with that, so it’s readily available for the consumer associated with that charge.

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

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

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

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

MS. DUSMAN: Correct.

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

MS. DUSMAN: Thank you.

MR. WARDIN: That’s how the wireless side is.

MS. BUNGO: We have another question pending.

Hi, my name is Bob Schoshinski, I’m an attorney here at the FTC, and I have a question about the verification of consumer authorization system that a couple of the panelists were talking about today and want
to frame it in regards to a personal experience I had with cramming. A couple months ago, my wife and I were looking at our phone bill and noticed a couple of monthly third-party charges on the bill that we didn’t recognize. And, so, we confirmed that we hadn’t ordered anything like that, called the local telephone company.

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

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

And upon having that information, what that told me is that someone, as John McGlamery had indicated, had accessed a data base of some sort and populated these sorts of fields with this information. So, the question is how does, you know, requiring that information ensure
that someone doesn’t just take this information which is already publicly available and use it to engage in cramming.

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

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

Kind of back to what I was saying, I’d like to see some sort of form whereby we passed -- and I’d certainly, you know, like to be involved, where we test something that is more solid. Again, potentially we require the consumer to pick up the phone and call in in order to activate the account and maybe some other (inaudible) means can be considered. Maybe, again, maybe
stretch it out whereby it’s a one-time sign-up process
and we end up with a phone bill law.

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

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

MR. TEAGUE: It’s a good point. And
potentially the industry needs to look at doing something
similar to what was done back in the day to solve or
identifying the phone numbers and how they were -- and
which phone companies owned a relationship with them -- I think that innovation is called LIDB or line item data base, and all of the phone companies were at one point and I think they continue to be mandated to participate in it so that we know what phone number that was, that the consumers associated with which phone company. Potentially an industry solution with some oversight by some sort of a government sort of entity whereby, you know, whereby that stuff can be checked.

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

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

MS. BUNGO: Thank you.

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

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

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

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

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

MR. MCGLAMERY: I have a question for the industry people. Tell me what the downside is for requiring opt-in and written verification between the LEC
and the customer that this is a valid charge. I mean, I know there’s an extra step, but of course the LECs can recoup it via their billing process back to the original merchant. It’s the -- maybe I can just leave it there. What’s the downside of having to -- requiring opt-in from the LEC to the customer and the downside of requirement and verification from the consumer back? That would still allow for billing, but it would certainly provide something that’s independent of the billing aggregators and the merchants.

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

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

MR. WOLFE: This is Doug Wolfe from the Federal Trade Commission. And, again, these questions and comments are my own and not those of the Commission. And I have a couple. Since we’re on the topic of authorizations, and I was happy to hear Mr. Teague
advocate a requirement of recording an entire
telemarketing transaction, because it is cheap to do now
and since 2003, the FTC rejected the argument and amended
the Telemarketing Sales Rule to say that it was too
expensive to maintain recordings, because, as we all
know, you can record literally and maintain hundreds of
thousands of digital recordings on a device that’s no
bigger than your thumb.

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

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

How about monitoring the actual usage of the
product or service being billed for and asking for authenticated, technically sound evidence that the consumer is actually using what they’re billed for? And that is if you can even get past the premise that the consumer Mr. Davis mentioned, is this required at all.

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

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

And then the final point related to that is that customer service departments for telephone companies and billing aggregators and merchants’ customer service
departments are continuing to tell consumers that
allowing third-party billing is required by the
government. Maybe somebody here can enlighten me on how
that is true, because it seems to me to be a false
statement and it’s still being made today.

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

Don, do you have any parting, final comments?

MR. TEAGUE: No.

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

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

So, at least for the bread-and-butter
telecommunications and information services that was a
requirement. That’s no longer true at least for my
company, for AT&T. I think it’s probably also not true
for the others. But that has been a relatively recent
development. Essentially, we were freed of that
obligation with 272 relief, which for the SBC companies
was November of 2007.

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

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

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

So, I think we will conclude this panel. I thank everybody for their participation and discussion.
Thank you very much.

(Applause).

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

(Lunch Recess).
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
applicable to payment methods still developing on wireless phones.”

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

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

We also have Mike Altschul, who is the Senior Vice President and General Counsel of CTIA, The Wireless Association. And prior to joining the CTIA more than 20 years ago, Mike worked in the Antitrust Division of the U.S. Department of Justice.
And, finally, we have Jim Manis, who is the
Chairman and CEO of the Mobile Giving Foundation. He is responsible for the first use of mobile giving in response to relief efforts in the Asian tsunami and Katrina relief efforts when he was the Senior Vice President of m-Qube, which is a mobile billing aggregator. He also -- he founded the Mobile Giving Foundation and also leads the consulting firm 1024 Wireless Services, which provides strategic direction for clients in the mobile space.

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

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

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

We represent a number of what are referred to as the mid-sized companies, such as CenturyLink,
Frontier, FairPoint, that are -- tend to be spread around
the country and tend to have more properties in rural
areas. And then we represent many, many very small
companies throughout the country focused in rural areas,
many of which have a couple thousand or even just a
couple hundred customers and lines.

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

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

At that time, then FCC Chairman Bill Kennard
responded by calling the ILEC community together to see
if they could identify practices that would work to deter
unauthorized charges from appearing on customer bills. While the FCC held open a threat that -- of taking a much more regulatory approach at that time, a more industry-driven answer was viewed as preferable for at least three different reasons.

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

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

So, such third-party services as long distance, pay-per-call, conference calling, and prison pay phone services were typically viewed by consumers as a natural
complement to their local service, with a convenience and
competition policy benefits from appearing on the
customer’s local bill. Today, related services might
also extend to internet and broadband-related services,
where the telephone company is also the consumer’s choice
of ISP.

The result of that ILEC effort begun at the
urging of the FCC was the Industry Anti-cramming Best
Practices Guidelines, which were developed and released
within two months after Chairman Kennard first called the
group together. While primarily driven by the ILECs, the
final best practices guidelines also included input from
the aggregator community and the service provider
community and included a number of key elements: pre-
acceptance screening of each provider’s products,
services, and marketing materials; procedures for
monitoring compliant levels generated by each provider,
along with complaint level targets under which the
companies, providers, or aggregators could be terminated;
requirements that providers implement appropriate
authorization and verification procedures to ensure that
consumers have, in fact, knowingly approved charges;
assurances that bills received by consumers provide clear
and comprehensible information concerning the services
being charged and the consumer may question or challenge
those charges; establishment of customer dispute
resolution procedures; recognition of the need to provide
consumers with options for controlling what charges
appear on their bill; and commitments to work with
appropriate law enforcement and regulatory authorities.

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

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

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

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

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

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

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

   Among those that are typically used are
requiring that the billing aggregator obtain and review a
detailed application for each new provider, including a
review of ownership and product information, the bill
description of the services, 800 customer numbers, and
marketing materials. This type of review in particular
at the front end can be very effective in preventing the
crammers from ever getting on the bill in the first
place.

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

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

The second level that I sort of break it off
into is efforts at making sure that the customer’s bill is as transparent as possible. And obviously a lot of this has to deal with things that are raised in the truth-in-billing guidelines. For example, third-party charges appearing on a separate section of a bill that makes it clear that the customer can challenge those charges without risking losing continuity of service.

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

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

MR. ALTSCHUL: I’ll be happy to cede you my time.

MR. REYNOLDS: Okay. There’s only three of us. And as I also mentioned, the use of welcome packages in which, you know, the company is required to -- the service provider company is prepared -- is required to send approved specific information concerning what the customer is alleged to have ordered.

The third level of anti-cramming protection
incorporated by the ILECs involves what they do once a
customer calls and complains. And I point out that while
the companies clearly put information about how to
contact the aggregator and/or the service provider, the
entity that they call, by and large, is going to be their
telephone company if this charge is appearing on their
bill. And the standard practice of the member companies
that I’ve spoken to in this regard is to provide a credit
to the customer calling to complain about a charge he
says he’s unaware of or did not authorize, no questions
asked.

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

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

An essential element of cramming prevention,
obviously, is the continuous monitoring of cramming complaints to identify potential problems that require implementation and remediation of the billing aggregators. Obviously, including these provisions in the contract make no difference if the companies do not actively monitor, follow, and evaluate the numbers of complaints that they’re receiving and follow up and implement the abilities in the contract to suspend and terminate. And I can tell you all the companies that I’ve spoken to have, in fact, exercised their authority to terminate or suspend either multiple service providers or even aggregators.

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

In my discussion preparing for this panel, and you heard a lot from, for example, AT&T this morning, but I found a number of my companies have also made significant reinforcements to their cramming defenses.
over the past year or so and that these upgrades are
significantly reducing the number of cramming complaints
received by their customer service reps.

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

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

And the final question that was raised earlier
by Laura was the responsibility of the industry to
educate consumers about third-party charges, and I think
there’s no question that the industry has a very
significant obligation, certainly responsibility, to make
sure that if their customers, if they’re providing this
service to their customers and they believe that their
customers -- that this is a service that is of value to
their customers, that they need to be reaching out to
ensure that their customers are aware that these charges
might appear on their bills.

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

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

MR. ALTSCHUL: Thank you, Bob.

MR. SCHOSHINSKI: There, that works.

MR. ALTSCHUL: Well, thank you for inviting me,
and I hope all of you aren’t too sleepy after lunch. The
good news for these presentations is that pretty much all
the ground that Glenn covered applies to wireless
carriers and then some. For those of you who like
aphorisms -- I grew up in a family that loved aphorisms
-- sort of the two organizing thoughts I want to use
today are trust but verify and carrots and sticks.
So, by trust but verify I want to talk about what both individual carriers and CTI as their industry association do to monitor compliance with a set of industry best practices that were established by the Mobile Marketing Association. That’s a trade association -- Jim is going to talk who has been very active in their activities over the years -- that developed a set of consumer best practices that should apply to mobile marketing that rides over wireless carriers’ networks.

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

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

So, I’ll go on, as I said, in a minute, to talk about our processes on monitoring. The carrots and sticks approach is that the carriers do enter into
contracts with aggregators and their customers for billing and collection services associated with premium content. And increasingly the individual carriers have adopted a model that rewards those marketers that have a low rate of customer complaints so that if somebody is not generating complaints to customer care, they will receive a larger revenue share from the carrier than from those services that generate more complaints.

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

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

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

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

And with third-party marketing, it has been enshrined both in the MMA best practices and in the carriers’ best practices to require pull rather than push customer consent. What does that mean? It means that nobody is sending offers to customers either as spam or signing them up. As a customer, the customer has to initiate the communication to the content provider using web address, a quick response code if you’re familiar
with how you can use the camera in a smartphone to take a picture of a barcode kind of device, there are multiple different symbologies in use, or a phone number or any other ways of initiating communications with the premium content provider.

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

Another set of consumer protections that are included in the Mobile Marketing best practices have been the subject of some presentations in prior Federal Trade Commission workshops that involve advertising claims and full and fair disclosures that are consistent both with the Federal Trade Commission’s advertising practices and
a series of consent decrees called AACS for assurance of voluntary compliance that a number of state AGs have entered into with wireless carriers in this area.

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

So, along those lines, I have three quick slides that I’m sure will be available on the website. I don’t have to go over in great detail now, that describes the monitoring program which CTI runs on behalf of the wireless industry. And we’ve now been doing this for a number of years by contracting with third-party firms. CTIA through an agreement, a contract, with NeuStar runs the registry for common short codes. And that’s just the
short address that’s used instead of an internet access
for sending messages, text messages, from phones to
content providers and others.

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

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

The monitoring doesn’t stop there. The
monitoring company also subscribes to each and every short code and sends test messages to each code and goes through the key requirements of the best practices, so if they text “help,” they want to see if they get a response to the word “help.” If they text “stop,” they want to see if the subscription or the messaging stops and the like.

And, so, that’s the verify part of the trust.

When -- so, this is talking about how we intercept. I got a little bit ahead of here.

And then this last slide, which probably violates every rule of PowerPoint presentations. Way too many words and way too small boxes. It shows the steps if we do detect violations, first of all, we share it with the participating carriers. To Glenn’s point, we are guided by the antitrust divisions, business review letters to some credit rating agencies, quite a few years ago, that suggest it is perfectly acceptable and good for consumers under the antitrust laws to share information about consumer practices or bad practices. But we insist that the carriers make their own independent decisions about what to do with any particular program that is found in violation. There’s not going to be any discussion or collusion among carriers to support or not support a particular code.
For those programs that we do detect violations, we, of course inform them immediately. And depending on the severity, there’s a clock of so many hours or so many days to come into compliance with the best practices. At that point, we retest, and if the program is in compliance, the sort of red flag is removed. If it’s not, CTIA through NeuStar can use the registry process to deny access to that campaign and those marketers to get additional codes or to renew their own codes. We can’t take the codes away. Again, it’s up to the carriers to make those determinations, but we certainly can deny access to anyone who’s been found not to be in compliance or come back into compliance.

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

And there’s, at least in our industry, a somewhat notorious lawsuit or set of lawsuits against a company called Jawa, J A W A, based in Phoenix, Arizona, named after a Star War critter, that both the Texas AG
sued in Austin, Texas, and Verizon has sued in Phoenix.
Jawa has vigorously asserted in its defense counterclaims
and asserted that they are not what they’re accused of
being.

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

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

So, that’s a quick review. Just to emphasize
one more thing that Glenn said, our carriers like
wireline carriers had a learning experience with the
first round of services, premium services, that they
provided, where if somebody called a wireless carrier to complain about a charge on their bill from a third-party, depending on the carrier, the caller, it might have been said, well -- might have been directed to the third-party content provider. That did not work very well. That was actually a very unhappy experience all around.

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

So, thank you and look forward to your questions.

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

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

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

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

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

That consumer best practices initiative was comprised of various constituent groups within the mobile industry, wireless operators, content providers,
aggregators, some other technology providers, to better understand each other’s business model and focus on what long-term sustainability meant with respect to consumer trust. So, the issues and the items that Mike had called out with respect to double opt-in, clear and conspicuous consent, those all emerged out of the MMA CBP processes, we refer to that.

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

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

We’re big supporters of carrier and CTA monitoring. We’re bigger supporters of enforcement. We think that it’s a good business to be in as long as conditions of trust are retained and argue that that type of monitoring and enforcement needs to be done a common
basis, not on an individual carrier basis and applied
cross the industry. And by doing that, it’s a
better utilization of resources and skills and talent.

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

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

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

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

But I want to emphasize that in mobile giving there’s a huge change. It is not the content provider that places a premium event on the bill. It is actually in this case, programs through us, it is the Mobile Giving Foundation. So, if a cramming event occurs, you don’t have to go investigate too far because you know that it’s with us, right? A donor will reply similarly
to the outline that Mike provided, using a key word to a
short code and a campaign is affiliated with a particular
price point, a $5 price point or a $10 price point, and
the donation itself is transaction-based as opposed to a
subscription model.

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

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

So, we believe it’s critically important to not
place that function outside into the commercial space but
keeping it within a 501(c)3 so at the end of the day the Mobile Giving Foundation can track and actually make sure that that dollar goes to the recipient charity, right? That closes that loop in our view that exists when you take a natural product out.

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

And, frankly, it should be less than that, but we’re learning some lessons, including the fact that like in the commercial space, the apparent travel relationship is important and rather -- when a donation occurs mistakenly by a child, oftentimes the parent will want that money back as opposed to asking the child to go perform a chore and thanking them for making and
supporting Japan relief efforts, for example.

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

MR. SCHOSHINSKI: Thank you, Jim.

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

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

MR. ALTSCHUL: Well, certainly the DNA of the wireless industry, you know, is directly descended from the wireline industry, and many of the practices and certainly the billing platforms are the same. But for a
number of reasons which are no longer the case this case of mobile marketing and premium messaging took off elsewhere, particularly in Europe ahead of the United States. And there were some very unpleasant consumer experiences in those markets.

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

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

MR. SCHOSHINSKI: And, Glenn, my question to you as the older sibling in this relationship, has your industry looked at what mobile is doing and seen anything
that you think is useful to imitate or solutions that you think are working or are not working in that space.

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

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

    MR. SCHOSHINSKI: Jim, I had a question particularly about the role of the aggregators on each of these platforms, and it seems to me you have the most experience, at least on the mobile platform. Is it a different role for a billing aggregator on the mobile platform than it is on the landline platform?
MR. MANIS: I can’t really talk to the differences, but the -- I think, as it’s been alluded to, there’s been a kind of an evolution of those roles over a period of time. I think originally the mobile aggregators definitely viewed that they would have kind of enhanced responsibilities to police and monitor the systems and the programs that they were running, that were running through the platforms.

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

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

MR. MANIS: They do. They’re responsible, they have messaging -- routing engines, they do billing engines, so they have -- and oftentimes they’ll have kind of campaign management responsibilities. There’s no one aggregator that really looks the same. Each distinguishes their services, if you will, based on the
competitive situation of the marketplace. But, yeah,
they provide a wide range of responsibilities and
functions in the market.

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

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

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

But then on top of that, sort of the second
layer, is obviously a part -- and there’s an obligation to follow and make sure that the billing aggregator is doing what it agreed to do in the contractual relationship. And, so, I know some of the companies have contractually provided for third-party auditing companies, well known third-party auditing companies to do contract audits to make sure that the billing aggregators are, in fact, doing what they’ve committed to do in those contracts.

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

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

Those are the key -- you know, so those obligations are part of what the aggregators should be
committing to do as part of the contract and the
aggregator -- the auditors of the aggregators are making
sure that the aggregators are, in fact, have processes in
place and are following those processes.

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

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

The other piece of it is that when violations
are detected, and they’re detected quite regularly,
unfortunately, the information is passed through the
aggregator and often the content provider and given the
severity of the violation -- and the severity of the
violation is really dictated by the effect to the
customers -- there is a period to cure before that code
is in jeopardy of being shut off.

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

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

So, we do not have a significant problem, but where the problem exists, it usually is significant,
i.e., the case down in Arizona.

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

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

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

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

MR. MANIS: There are examples where carriers will drop individual programs. There’s examples where carriers may not agree on which individual programs will -- to drop. And there’s examples where carriers will penalize aggregators, including non-contract renewals, yes.

MR. SCHOSHINSKI: And when you say penalize, is
MR. MANIS: It certainly translates to a financial penalty.

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

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

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

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

MR. SCHOSHINSKI: Okay, any other questions?

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

MR. ALTSCHUL: Well, the current monitoring is the kind of premium content that customers subscribe to
using text messaging. So, when you opt in, you’ll get a
response from the content provider; it will advise the
customer of the charges, if any, or if standard message
rates apply; the frequency of the service, how many times
a day you’ll get ball scores or horoscope or the like;
information, where to go for help; and instructions to --
how to subscribe by responding with yes or no or help or
whatever.

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

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

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

UNIDENTIFIED SPEAKER: Is part of what’s
captured the actual -- some piece of digital evidence, if
you will, that --

MR. ALTSCHUL:  Screen shots.

UNIDENTIFIED SPEAKER:  -- message --

MR. ALTSCHUL:  Our monitoring captures the
screen shots.

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

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

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

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

(Applause).

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

(Recess).
SESSION 4: POTENTIAL SOLUTIONS TO THE CRAMMING PROBLEM

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

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

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

In fact, I would entitle this panel, “Something to be done.” If we’ve heard nothing else for the last several hours, we’ve heard loud and clear that there is a problem out there. And we’ve already heard a fair amount
about some possible solutions, some possible approaches
to tackling what is a significant consumer protection
problem. And we have the benefit this afternoon of a
panel of experts who will probe some of those issues more
closely.

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

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

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

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

I’m going to take the lead on providing a
little bit of information from some of our state law
enforcement colleagues, who simply were not able to be
with us this afternoon. Briefly, I spoke with Jim
DePriest from the Arkansas Attorney General’s Office.
His office has been working directly with LECs so that
each would provide a free third-party billing block,
which would be available upon request. He said this is
modeled off of an agreement from July of 2009 that
Connecticut entered into with the LECs in which they
agreed to -- excuse me -- that agreement was with AT&T,
in which AT&T agreed to block all third-party charges at
the consumer’s request. The proposal in Arkansas, as was
the case in Connecticut, would be limited to landlines.

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

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

MR. JONES: As Lois said, my name is Erik
Jones, and I’m Counsel for the Senate Commerce Committee,
which is chaired by Senator Rockefeller. And first I
just want to thank the FTC for holding this forum today. I know that Senator Rockefeller very much appreciates the FTC’s effort to bring increased attention to this problem.

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

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

In 2009, Senator Rockefeller decided to establish an office of oversight investigations for the
Committee. And he did that because the Senate Commerce Committee has very important jurisdiction over important aspects of the American economy. And we also have jurisdiction over the FCC and the FTC, which are important consumer protection agencies and are partners with the Committee in combating abusive practices.

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

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

And, so, we found that to be a -- when we looked at the problem initially, we didn’t know how bad it was going to be, and actually we were shocked that it
was a billion-dollar problem. And we eventually passed legislation to fix it. But once we were finishing that investigation, we took a look around and tried to find other areas that needed to be addressed. And one of those we quickly saw, and this was last year, was the issue of cramming. And it presents similar problems, and it’s a similar scenario that we saw in this other investigation we investigated about the online marketing practices.

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

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

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

And the reason why we did not start with, let’s
say, a solution and just introduce a bill on the outset
is we wanted to understand the scope of this problem and
really get a handle on it before we tried to -- before we
tried to tackle it. Now we’ve spent the better part of a
year on this -- I mean almost a year, and Senator
Rockefeller just announced today that in the coming
months we will be doing a hearing and issuing a staff
report on that.

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

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

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

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

And based upon all of this, what we are seeing, and Senator Rockefeller has just released a letter where he says this, but we’re seeing that cramming is a pervasive problem on the third-party billing system. It appears to be rife with fraud. And we -- and that is because it appears that the telephone companies have been too willing to place third-party charges on their customers’ bills without first determining whether or not those charges are, in fact, authorized.
So, that is the -- because of that, we’ve shared all of our evidence with Senator Rockefeller, he came to the same conclusion. That’s why he has announced that he’s going to be doing a hearing and releasing a staff report at some point in time.

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

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

And, one, I want to make a point, too, that
earlier it was suggested that, well, there’s a point in
time when the telephone companies were required to place
charges on their bills and now they’re not required.
Whatever that may be, the telephone companies were never
-- have never been required to place unauthorized charges
on telephone bills, and I think that’s an important point
to make. So, even when sales reps are saying that to
their customers, that’s -- that they were required to do
it, even if it was before 2007, they were never required
to put unauthorized charges on their customers’ bills.

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

And by the time Congress got involved, because
Congress did hold a number of hearings on this issue, the
hearings that were held, the question that was addressed
during those hearings was basically about whether the voluntary actions would be enough. And what you saw in these hearings in the late ‘90s were the members of Congress who were on these committees, they were afraid of getting ahead of third-party billing, because no one wants to stifle innovation. And that’s something that you see up here on Capitol Hill right now about the new issues that are appearing, whether it’s privacy or whatever it is. No one wants to get in the way of innovation. And at the time, third-party billing was a very new system.

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

And in response, Congress passed the Fair Credit Billing Act, which placed requirements on the credit card companies and limited the liability that
individuals could have, credit card customers could have. And, so, that was addressed. Senators looked back to that and thought maybe that’s what we should be doing with respect to telephone bills. And in the end, the decision was made let’s give the telephone companies the benefit of the doubt, let’s allow them to fix this themselves.

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

Their protections are much different, and because of that and because we’re seeing that cramming remains to be a large problem, Senator Rockefeller has said that he wants to reexamine the voluntary guidelines that were established in the late ‘90s. And whether they were effective at that time, I’ve read and I’ve seen that, you know, the complaints came down afterwards, but what we’re seeing is the cramming complaints have gone back up and in order to put an end to this problem once and for all, I think that we’re going to have to reexamine and take a close look at it once again.
And I just want to close just quickly with Senator Durbin was at these hearings that were happening back in the late ’90s, and he was very concerned about the unauthorized charges that were appearing, he was concerned with the voluntary approach. And he said, you know, we may find ourselves months from now or years from now saying this just did not do it. And I found that very telling now that it’s over 10 years later and here I am trying to address cramming. And his words, you know, were certainly prophetic.

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

MS. GREISMAN: Thank you, Erik. Elliot, you’re up next.

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

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

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

So, over the past year, we’ve been investigating third-party charges to local exchange carrier bills. We’ve issued a number of subpoenas to major aggregators, and upon learning the identities of
the merchants that they aggregate for, we’ve issued subpoenas to, at this point, probably three or four dozen merchants. We’ve taken a look at marketing materials. We have surveyed their customers. We’ve looked to see if they’ve been complying with the notice requirement that I just mentioned.

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

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

But most importantly we have found based on surveying customers of the companies that have been putting through these charges to the phone bills and interviewing many of those people and businesses, we have found that a very substantial majority of the people out there do not understand that they can be billed on their
phone bills for charges that are unrelated to their telephone service. We sent out in the first wave of merchant investigations, we sent out I think about 1,700 written surveys. We got something over 500 responses back, which is not bad for that kind of survey, and almost 93 percent of the people who responded had absolutely no recollection of ever having agreed to be charged on their local phone bills.

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

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

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

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

So, in essence, we’ve gone all the way here and
said that -- I think what we’ve done reflects some
reticence about -- some hesitation to believe that there
is a way of keeping the onus on consumers to opt out of
this kind of billing or to recognize on their telephone
bills that they actually are being charged for something they haven’t agreed to. And we simply said, here, if a merchant wants to be paid by a business or an individual consumer, there are lots of ways of doing that. There are credit cards and debit cards and checks that can be written and PayPal. This is not an appropriate way to do it, and it’s not consistent with normal, human expectations out there, and it’s not going to happen anymore.

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

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

Next, Keith.

MR. VANDEN DOOREN: Thanks very much. My name is Keith Vanden Dooren, I’m with the Florida Attorney General’s Office. I would first of all just say I ditto everything Elliot just said, in particular, putting the onus on consumers to, you know, get unauthorized charges
off their bills after the fact is not where we need to go. But I’m going to get to that in a minute.

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

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

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

This came out strong in a case that we were handling not too long ago in a trial where we requested certain complaint data in discovery. And we happened to have about 30 witnesses, consumer witnesses, on our
witness list. And we asked the carriers for all of the
complaint data that they had relating to these witnesses,
because we already had written documents where they had
sent the information to the carriers, but we wanted to
see everything the carriers had.

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

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

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

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

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

And just -- I’m not going to spend a lot of time because this has been stated before and I think Elliot stated it pretty well in his presentation, but basically most customers do not know that third-party charges can be placed on their telephone bills. I mean,
they don’t think that way, and they’re not expecting it. And because they’re not expecting it on their telephone bill, they’re not looking at it very closely either, which means that they normally don’t pick up on the fact that they have had unauthorized charges placed on their bill.

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

The other problem I see in the cramming area is that all of the parties -- I’m talking about the carriers, the aggregators, and the vendors -- all are uncentivized, they all make money out of this. And most of the time what we hear from customer service reps and others is they are incentivized to save -- save -- accounts and transactions and charges, not to remove them. And we get so many complaints where people have asked to have the charges removed, they send them through the circle. They send them to the aggregator, they send them to the vendor. And they get into the circle and they never get out of the circle.
All right, this takes me to what we would recommend in Florida, although I might say as a personal note that I would be in favor of just banning all types of third-party charges. I think that would take care of the matter, and I think it's appropriate in view of the fact that most customers don't know they're getting these charges and don't expect to get charges on their phone bill. And I'm talking landline. Wireless is another issue, but I think it could use the same approach.

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

Then, if a customer so wants to have some third-party service, product, whatever, they can contact their carrier, who they -- that's where they go to directly. I mean, that's who they trust to do all of their phone bill transactions. To have the third-party block removed either as to a particular sub-kick vendor or to have it removed as to everything.
And if that were done, we would have to have clear and conspicuous, informed -- clear and conspicuous disclosures about what that would mean to get the block removed and all the terms and conditions that relate to that, as well as an expressed, informed consent to do it. And what we mean by that is some kind of written document from the account -- telephone account owner to the company saying “I want this block removed either partially or in full.”

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

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

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

This actually went through the wireless side, and it was a wireless company. And it was basically -- what we see also in cramming is that most of the offers are in negative options. So, you got a free trial for 30 days; if you don’t like it, you got to cancel it, people
don’t know they have to cancel it, it’s not really
disclosed, those kinds of things. That’s what happened
in this particular case I’m referring to. The carrier,
at the point of sale, sometimes never even mentioned
roadside assistance but people ended up with it. Didn’t
know they had for long periods of time, sometimes years.
So, it’s not just limited to distinct third-
party vendors. It also happens once in a while with
regard to the carriers themselves and their particular
products that they’re selling and offering. So, with
that, I appreciate it, thanks very much.

MS. GREISMAN: Thank you very much, Keith.

Joel?

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

Let me tell you a little bit about both how we
know from our perspective that cramming is a problem and
how we address it as an agency and what we see as some
areas where it would be important to look for solutions. We look first at our own complaint data. We receive cramming complaints about both wireline and wireless carriers.

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

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

What people complain about is, you know, services like long distance call, international, or collect calls that were not actually made or received, as well as add-ons like games or security, tech support, things like that that they see on their landline bills. And on wireless, we also get -- we also get, of course,
you know, the horoscopes and the roadside assistance and
all of that kind of thing.

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

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

Now, the biggest example of that was a consent
decree that was worked out with Verizon that you may have
heard about last year where a number of consumers and
also press had reported that a number of Verizon Wireless
pay-as-you-go customers had unexpected data charges of
$1.99 per megabyte on their bills. Apparently there was
a way in which you could very easily activate that
without knowing that.

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

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

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

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

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

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

    So, what can be done about this? As I said, we
are kind of in studying and listening mode, but there are
certainly a number of kinds of issues that have come to
our attention as possible areas. And I think they really
fall in the very general areas of disclosure and blocking
and education. I mean, one thing that we think we can
take part in doing is educating consumers about the
existence of cramming because it’s clear that so many
people still don’t know about it.

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

We’ve also found in talking to wireline and
wireless carriers that many carriers actually do not
offer that option when you sign up, but they will offer
it if you call to complain about cramming. So, given
that it’s obviously possible to offer a blocking option,
the question is could this be done earlier, could this be
done more proactively.

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

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

MS. GREISMAN: Thank you, Joel.

John?

MR. BREYVAULT: So, I’m in the unenviable
position of batting cleanup after all these great
comments, but I did want to take a moment to thank Lois and the FTC for convening what I think is a really important forum today and for inviting NCL to speak.

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

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

In my opinion, there’s very little legitimate business being conducted that uses third-party billing on landline phone bills. Mr. Burg, who spoke earlier, was quoted recently. He mentioned that 93 percent of the respondents to the Vermont survey said that they had no
idea that they had signed up for these charges. There have been other similar statistics described today.

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

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

First, all phone customers requesting a third-party billing block should be granted it with no questions asked. AT&T mentioned in its filing for this
workshop that it proactively offers third-party billing
when a consumer calls with a cramming complaint, where
other telephone companies don’t offer that and they
should.

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

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

There needs to be better coordination between
the carriers and the stakeholders in the cramming debate,
including the FTC, the FCC, and the BBB. If a cramming
complaint is received by any one of those three
organizations, it should trigger an investigation by the carrier with the billing aggregator and the third-party vendor.

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

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

In my opinion, they would be more likely to recognize a suspicious charge as cramming if the charge was listed under the name of the third-party service provider. So, A, disclosure rules that are considered should require that the third-party service provider name be the one that’s listed first on the bill, followed by the aggregator, if the aggregator is going to be mentioned at all. In this way, we think that the consumer can better recognizing the cramming.
One of the things that has been suggested is a registry of consumers that don’t want third-party billing. This stems from the success of the Do Not Call Registry. That was hugely successful and beneficial to consumers. But can that success be replicated here? I’m not sure. For one thing, cramming in and of itself is illegal. Telemarketing phone calls were annoying, but they are generally legal. So, how can you -- I don’t see how a registry to opt you out of something that is already illegal would be useful.

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

We think that the results of the Vermont AG survey and other surveys were reflected nationally, that this would be proven indefinitely. I think you saw in the affiliate marketing -- in the affiliate marketing side that Senator Rockefeller looked at last year that once you start to dig into these services, consumers are overwhelmingly not interested, they don’t want these services, they didn’t mean to have them in the first place. So, I think that this is -- third-party billing
is a business model that’s going to be shown to be based on deception of consumers.

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

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

It’s also a little more difficult, I think, to regulate that on the wireless side, because they are more loosely regulated in general than the landline phone service. So, I think this puts more of an onus on the
FTC to ensure that billing via the mobile platform is conducted in a fashion that doesn’t deceive consumers. At the very least, I think the FTC should be asking carriers to ensure that the processes they’ve implemented on the landline side to control cramming be implemented on the wireless side, as well. And of course a more aggressive approach would be simply to require that a third-party billing block be an option offered to consumers on the wireless at service inception.

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

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

One just says require written authorization through the U.S. Mail. Another, isn’t it clear at this point that the FCC’s best practices are not working, given that consumers do not know as shown by Inc21 that third-parties can bill them? Shouldn’t consumers have to
opt in with a notarized statement?

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

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

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

MR. BURG: It’s limited to wireline.

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

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

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

MS. GREISMAN: Okay, before we come back to
you, Keith, can you follow up, because at one point you suggested that it was different but perhaps the same rules of the road should apply were blocking to be enacted.

    MR. VANDEN DOOREN: Sure, I mean --

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

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

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

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

    But at the same time, I should mention just -- we have seen that there are some issues on the wireline side and, you know, it’s -- sorry, wireless side, and
we’re still sort of waiting to see how this goes to
determine what we’ll do on that.

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

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

MS. GREISMAN: Elliot, let me -- I’m sorry, go
ahead, John.

MR. BREYAULT: The one issue that you have, I
think, with an opt-out regime on third-party billing is
that if it’s intended -- the opt-out regime is intended
to control cramming. The problem lies in that cramming
is inherently deceptive. We know that consumers tend to
overlook these charges on their bills, often for months
and sometimes years at a time.
And, so, it’s -- by putting an onus on the consumer to recognize the cramming and then ask for the block, I think you just leave the field open to unscrupulous actors who do want to cram on the wireless side. So, this is why I think that, you know, the third-party block should be allowed at service inception -- should be recommended at service inception, if not made the default when a consumer signs up for service.

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

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

MR. GURIN: Yeah, and I just want to reinforce that this goes back to the notice of inquiry that we put
out in 2009. John, what you said about, you know,
disclosure at the inception of service at point of sale,
I think that’s a concept that’s very important for us to
look at at a number of issues. When we think about our
own truth-in-billing rules, by definition, they are about
truth-in-billing. Truth at point of sale and what should
be disclosed at point of sale is, I think, a kind of
evolving consumer issue. Certainly issues like early
termination fees raise that question, as well. And I
think with cramming it may well be that part of the
solution is not just what you show on the bills but what
you tell people when they sign up for service about what
their options are.

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

John, any thoughts?

MR. BREYVAULT: Well, I mean, again, I think,
you know, the registry idea has a certain appeal to it because most consumers have signed up for the Do Not Call registry, but I’m not sure that a registry to opt out of something that they should not be charged for in the first place is -- I’m not sure that that is going to be a very useful tool.

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

MS. GREISMAN:  Erik?

MR. JONES:  I’d just like to add a couple points to that. What John’s saying about, and other panels have said this, as well, but in our investigation we’re seeing the same thing with respect to consumer awareness about third-party billing on telephone bills. I mean, and this is anecdotal, but consumers just do not
get that their telephone numbers can be used in a fashion
similar to a credit card. It’s just not -- it hasn’t
taken, and it’s been over -- now, well over a decade
since it was first implemented. And I don’t think that’s
going to happen.

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

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

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

MR. BURG: Yeah, just a couple of points here.
The first one I hope I’m just hammering this into ground,
but I wanted to say something about the ratio between
complaints and actual victims in the cramming area and
just give a specific here. So, for not so small a state
we have 600,000 people in our entire population. We’ve
had through our public service department 72 cramming
complaints in the last year. We took -- we’ve had a
number of settlements now, eight settlements with
merchants, we have many more in the pipeline.

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

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

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

What we’re seeing for business customers is
that the service that is most often offered is online
yellow pages directory services, which is, first of all, in the internet/Google age, I don’t know why a company would want to order that, but how would anybody know that it’s out there anyway? So, business can go on for years not knowing that in the -- in the online world somewhere there’s some kind of listing for them that doesn’t really impact their local business anyway.

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

MS. GREISMAN: Thank you.

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

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

MR. KERBER: Yeah, it’s Mark Kerber from AT&T again. A couple of people on the panel advocated a
complete ban on third-party billing, and I’m wondering if you mean that literally or if you mean something more like what Vermont did and in particular are you talking about no collect calls, no inmate calls, no direct-dial toll?

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

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

MS. GREISMAN: Anyone else?

MR. BREYAULT: Yeah. You know, I think that the usage question comes into play here. If you’re thinking about services that you want to ban, I think the Vermont bill is a good place to start, but I think you should also look at whether or not these -- if it is a collect call or operator-assisted service or a third-party toll charge that’s being used, you know, I think it’s incumbent on the LEC to look and see how is this charge actually being used and, you know, and the LEC and
honestly regulators to say is this a service that passes
the sniff test. And if it’s not, I think it could very
easily be wrapped into a prohibition similar to what
Vermont has passed.

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

Other questions? Erik.

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

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

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

MS. GREISMAN:  Sir?

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

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

MS. GREISMAN:  Thank you.
Other questions?

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

And, Joel, I know you mentioned in your presentation that the FCC is looking at improving its truth-in-billing rules, which require a separate section for this. So, I’d like to hear from the panelists on why you think -- why you’ve sort of given up on the idea of improving telephone bills or believing that a more useful bill will help solve this problem.

MS. GREISMAN: Joel?

MR. GURIN: Well, we have not given up on that concept, so I’ll let someone else answer that.

MR. VANDEN DOOREN: Well, let me jump in here real quick. A couple of things about the bills -- and by the way, I know -- I haven’t been in this the whole decade, but most of the decade, looking at different bills from different carriers. And the improvements that I’m seeing are not what I would consider clear and conspicuous, meaningful, and, you know, giving consumers
a chance to really see this, particularly when the
consumers are not expecting to get charged.

I mean, they have no idea that they’ve signed
up for something, so they’re not scrutinizing it line by
line. You got a 15-page bill that comes in and you’re
looking through all the lines and usually what I know of
the carriers is that these third-party charges come
towards the end of the bill. So, you got to go through
10, 12 pages of stuff to get there.

The third-party charges, I don’t know which
carrier does this, maybe they all do it, but they have a
little squiggle. I mean, it’s a very fine-point squiggle
that nobody knows what it means until you get to the back
of the bill and you see this third-party charge. I mean,
it’s just not workable. And I think, you know, what
Senator Rockefeller said, it’s just time to stop the
cramming. It’s just -- you got to stop it, period.

MS. GREISMAN:  Erik?

MR. JONES:  I can add something, and let me
preface this with saying that this is me speaking and I’m
not speaking on behalf of the Committee. But based upon
what we’ve seen, I don’t think we can disclose our way
out of this problem. The charges are or have been --
they’re on the phone bills. I mean, the FCC did truth-
in-billing rulemaking in the late ’90s, and the charges
are on there if you’re looking for them.

And as Keith mentioned, if you’re a customer of a telephone company and you don’t understand that your telephone number can be used as a credit card, you’re not going to be looking for random charges in the first place. And, secondly, comparing this back to the investigation that we did with respect to the abusive online marketing practices we were seeing last year, in those circumstances, the charges were appearing on your credit card statement or your checking account, and people still didn’t see it. And that’s a situation where people are actually more frequently looking at it to find new charges because they’re using their credit card on a probably daily basis.

So, fixing the problem on the back end just doesn’t -- I don’t -- it’s probably not going to get us there to put an end to the problem.

MS. GREISMAN: One last question.

MR. BREYVAULT: Can I fill up on that real quick?

MS. GREISMAN: Briefly, please.

MR. BREYVAULT: Sure. The one thing I would add to that, as well, is that the problem with relying on consumers to be checking their phone bills is that not only does the phone bill remain long and confusing often,
but because consumers are increasingly being pushed to adopt paperless billing, for example, and automatic bill pay, they have even less incentive to pay attention to the bill. Most of them just see it as another line item on their credit card bill.

MS. GREISMAN: Last question.

MS. GUERARD: Collot Guerard from the Federal Trade Commission. That was a point I was going to make that more and more the paper bill is morphing into an online bill where it’s probably even more difficult for consumers to identify unauthorized charges.

MS. GREISMAN: Thank you. And with that, please join me in thanking our panelists.

(Applause).

MS. GREISMAN: And I ask that you remain seated. I’m happy to introduce Chuck Harwood, who is the Deputy Director in the Bureau of Consumer Protection.

Chuck?

MR. HARWOOD: Well, thank you very much. I want to thank in particular all the panelists who are currently up here and the panelists who have joined us and participated earlier today in the various panels we’ve had.

I want to thank the staff of the Federal Trade Commission and the staff of the Marketing Practices
Division and of the other FTC employees who have worked so hard to put this event on.

This morning, we heard about some, you know, truly impressive law enforcement efforts reflecting significant commitment of prosecutorial resources. We heard about states that have brought literally dozens of cases involving cramming. We heard about some great FTC cases. In fact, the FTC has brought about two dozen cases involving cramming, in which the dollar amounts were in the hundreds of millions of dollars involved.

We also heard about criminal law enforcement efforts. We heard about efforts to deal with problems in Pennsylvania; and we also heard about instances in which both criminal and civil prosecutors have worked closely together to try to deal with the problem of cramming. You know, in the world of prosecutors and prosecutions, that’s pretty much everything you can get. States, feds, criminal, civil all working together. They’ve used all their resources, and as we’ve heard over and over again, the problem persists.

As much as I’d like to say we’ve done it, it’s been taken care of, law enforcement’s fixed the problem, clearly that’s not the case here. We heard, for example, about a recently filed case, the case recently filed by the FTC, called Inc21. The case is interesting for a
couple of reasons. First of all, it demonstrated, again, that cramming remains a problem. And, secondly, it demonstrates what I would characterize as the adding-insult-to-injury problem, that only our consumers, and I’m going to add and echo a point that Elliot made, that these are consumers who are not just, you know, your mom and your dad and you, but they’re also businesses, including some fairly sophisticated businesses.

I mean, what we heard about with the insult-to-injury problem is not only are consumers being faced with charges that they didn’t authorize, charges they didn’t expect to see, but, secondly, they’re being charged for things they don’t want and, in fact, are completely and totally bogus. So, to add insult to injury, they’re being charged for things that nobody in their right mind could possibly use. We heard just a minute ago about yellow page charges. You know, that’s an insult-to-injury problem.

Now, we also talked this morning a bit about mobile. And if there’s a flashing red light saying “warning, warning, cramming is a problem here” with regard to landlines, it’s clear that in the mobile arena it’s more of a yellow light. There’s a caution sign. It may be that there is something that needs to be done, it may not be.
Clearly, there are some important and significant features that are involved in the mobile world that we don’t see in the landline world. I think John mentioned one of those, for example, with the text-to-donate area, clearly something that has shown itself to be highly valuable and much, you know, consumers really like that kind of service.

So, while in the landline world, it’s clear that cramming, unauthorized charges by third-party are a huge problem, it’s less clear that in the mobile world we can safely charge into it with the solution that would look anything like what we might do in the landline world.

Now, I was also struck by the fact that this is not a situation in which industry has sat on its hands. Industry has clearly made a significant effort to try to address the problem. It has taken steps to detect, monitor, and prevent cramming because the industry, too, suffers losses when crammers scam consumers. So, industry has not -- this is a problem that affects industry clearly and directly.

Industry has, in fact, you know, taken significant efforts. But given the enormous amount of consumer injury and the relative ease with which crammers have skirted the steps that industry has taken, it’s
clear that these efforts have come up short. Crammers and scammers, which inadvertently I created a rhyme there, I didn’t mean to, have figured out ways to circumvent these efforts. They’ve -- the best efforts, the most creative efforts industry has taken and come up with so far have not been sufficient to stop the problem.

Now, we’ve talked in the last couple panels and particularly in this last panel about some solutions that we should all be considering with regard to how to go forward in the area of landline cramming. We’ve talked about third-party call blocking. What we heard was that some LECs already offer third-party call blocking for free in many instances, but consumers don’t necessarily know they can request it or that it’s free. And, in fact, some -- and the clear message there was that perhaps LECs could be doing more to make their customers aware of the option. Or they could instead be making blocking of third-party billing a default option instead of an option that has to be requested by a customer at some point.

We also heard talk about prior written authorization, that perhaps LECs should be obtaining prior written authorization from consumers before they bill consumers, again, something that probably merits further conversation and further thinking.
We also heard some talk about better information sharing among industry players. LECs and aggregators could do more to share information about the bad actors in this industry, some people have suggested. That when one vendor -- or rather when on aggregator identifies a bad vendor and cuts them off, do those bad vendors just move to another aggregator or another billing operation, undetected for quite a while.

We’ve talked about whether more could be done to actually exchange information among the LECs and aggregators to try to let them know, hey, this is a bad actor, he’s heading your way, you know, be on the lookout.

We talked briefly in this last panel about something called a Do Not Cram registry. Now, there was some skepticism. I know John was skeptical of it; others were skeptical of it. But still that remains an idea that we might want to contemplate further. A Do Not Cram registry is somewhat like the Do Not Call registry, only it involves cramming, consumers basically registering and indicating they do not wish to receive third-party billings.

There was a lot of talk throughout the day about disclosures, whether the disclosures consumers currently receive in many contexts are adequate.
Disclosures on the phone bills, whether they’re adequate. Disclosures at the time consumers initiate their services, whether they’re adequate. Whether the kinds of disclosures consumers get are meaningful to them. Do they get information about the vendor that’s offering the service? Do they get information about the service they’re actually purchasing, the price of the service? Should those kinds of disclosures be listed on a separate place on the phone bill? Should they be larger, more prominent? Should they be given at various times over and over again?

Again, there appears to be a lot that could be done in the area of disclosures and exploring disclosures. Whether that would be effective or not, I think, is something we talked about in the last panel, but certainly it merits further discussion.

Finally, we heard some fascinating discussions about legislative solutions. Elliot Burg talked about Vermont’s new solution that just prohibits third-party billing, but we also heard some people who I think, by landlines with some carve-outs, but we also heard some people, I think, who suggested that maybe that goes too far. And there was some, you know -- and, so -- but clearly that’s another area that merits significant attention, significant thought, something we all will be
thinking about.

So, I want to just close with a couple of final comments. First, one thing I was struck by today was there was very little finger pointing. People didn’t say it’s your fault; no, it’s your fault, which I think is significant. What I take away from that is a sign that we’ve reached a point at which everybody pretty much agrees there is a significant problem here. And everyone is interested in engaging in a search for constructive, meaningful solutions, solutions that are effective, sensible, and will actually help consumers prevent the kinds of losses that we heard about today.

The FTC wants to be part of that search. We want to work with the Commerce Committee; we want to work with the FCC; we want to work with the states; we want to work with industry; we want to work with consumer groups to try to find ways to prevent this problem. Because I think as our senior citizen representative back here said, really, is it a good -- is it sensible for the Federal Government and the states to continue to expend large amounts of enforcement resources on this effort when there might be better solutions out there if we all work together at them. So, the FTC wants to be part of that effort.

And, finally, I just want to -- as part of that
effort, I want to just mention one final little note. If you are listening to this or hearing about this or if you’re here in the room and you have additional comments about things that we could do, we would love to hear from you. You can file comments on the public record for this event through May 31st, and we’d love to get your comments, your suggestions, expand on what you’ve heard, criticize what you’ve heard, but let us know what you think we can do with regard to cramming. We’d much appreciate it.

And with that, I think we’re done. I thank all of you again for being here today.

(Applause.)

(At 4:10 p.m., the workshop was concluded.)
CERTIFICATION OF REPORTER

MATTER NUMBER: P104403
CASE TITLE: Cramming Project
DATE: MAY 11, 2011

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

DATED: MAY 17, 2011

_________________________________________
LINDA METCALF

CERTIFICATION OF PROOFREADER

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

_________________________________________
SARA J. VANCE