Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	))	CG Docket No. 11-116
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To the Commission

<u>COMMENTS OF PAYMENTONE CORPORATION</u>

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SUMMARY

PaymentOne is a leading payment processing services company, offering its customers an array of billing platforms, including those that allow for telephone billing. Since its inception, PaymentOne has processed over $4 billion in transactions, and its Anyphone™ payment solution for telephone billing is a state-of –the-art platform that incorporates methods of authorization and confirmation that equal if not exceed well accepted credit card authorization and confirmation practices,

Telephone billing, when proper protocols are followed, offers consumers and businesses a safe and convenient alternative to having to purchase through credit and debit cards. Phone billing offers those without credit cards access to E-commerce and those with credit or debit cards an alternative to high interest rates and various charges that are associated with credit and debit cards. For many, phone billing is becoming a preferred method of billing over credit cards and other payment mechanisms. Indeed, a recent survey found that, due in large measure to the security concerns associated with the use of credit cards, nearly 79% of decisive consumers would be more inclined to purchase online if there were safer and easier alternatives to credit cards. That same survey found that consumers viewed charging small purchases to a phone bill four times more secure than loading card data or bank information on a phone to make a payment. For consumers who either have no credit or debit card (approximately 12% of the population) or choose not to use it online due to security or other concerns, billing solutions such as PaymentOne's Anyphone™ billing platform constitute a viable means for participating fully in E-commerce, which is rapidly becoming a key driver of the economy.

While cramming warrants the continuing attention of the industry, the scope and extent of cramming is not as broad as indicated in the NPRM. In PaymentOne's experience, in the context

of third party billing, most transactions that fall within the "cram" category are in fact authorized, with the majority of reported "crams" attributable to mere allegations of improper billings, "buyer's amnesia," or "buyer's remorse." Even using these inflated "cram" statistics – those that include transactions for which the service provider has a record of authorization – the overall cram rate for transactions processed by PaymentOne was well below 1% as of the second quarter of this year. Moreover, PaymentOne has seen a drop in overall cram rates of approximately 26% from the second quarter of 2009 to the second quarter of this year, due in large measure to various safeguards, protocols and practices implemented by PaymentOne over the past two years. As PaymentOne and others in the industry continue to refine existing safeguards and implement new protections, cram rates are expected to keep falling.

PaymentOne shares the Commission's desire to prevent the imposition of unauthorized charges on consumers and businesses, and supports the specific rules proposed by the FCC to minimize the potential for confusion by enhancing bill clarity and disclosures to subscribers. There is every reason to think that practices that have been more recently adopted in the industry, combined with those proposed by the Commission in the NPRM, will result in a significant reduction in overall cram rates industry-wide. However, the Commission should balance the need to protect the public with the benefits offered through phone billing as our economy continues to change. Considering the increasing importance of telephone billing to consumers and businesses, and considering that cramming levels are overstated – including a variety of situations that do not involve non-authorization – and are falling, the Commission should avoid onerous regulation that is not now necessary, and would only unnecessarily serve to stifle or inhibit access to E-commerce for many or inconvenience and burden consumers and businesses.

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COMMENTS OF PAYMENTONE CORPORATION

PaymentOne Corporation ("PaymentOne"), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,[1] respectfully submits its comments in response to the Commission's July 12, 2011 Notice of Proposed Rulemaking ("NPRM")[2] in the above-referenced proceeding.

PaymentOne is a billing aggregator that acts as a telephone bill processing intermediary and offers a full range of other billing solutions to companies selling digital products or services to consumers and businesses. In addition to performing intermediary services between service providers and local exchange carriers, PaymentOne billing platforms include credit card, cell phone, direct and account debit billing. Since its founding in 2000, PaymentOne has pioneered "no credit card" payment processing services that enable all consumers and businesses to

[1] 47 C.F.R. §§1.415 and 1.419.

[2] *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116, Consumer Information and Disclosure, CG Docket No. 00-158, *Truth-in-Billing Format*, CC Docket No. 98-170, *Notice of Proposed Rulemaking*, FCC 11-106 (released July 12, 2011).

participate in the digital economy. PaymentOne has handled over $4 billion in processed transactions. Its telephone-billing customers run the gamut from small and medium-sized merchants to Fortune 500 companies, and include some of the most recognized and established names in digital commerce, including America Online and Blizzard Entertainment.

PaymentOne's "Anyphone™" payment solution provides a simple and secure option for online and mobile consumers to pay for their digital subscriptions, mobile applications and other digital products and services. With Anyphone™, mobile, broadband and home phone options are integrated and enable purchases on virtually any mobile or connected device on any platform. The methods of authorization and confirmation for Anyphone™ typically are as, if not more, robust than well accepted credit card processes: the user supplies personal information to ensure accurate and authorized billing, and confirms terms of purchase and billing, and information is then verified using data from third party sources. The purchases are then charged to the purchaser's existing mobile, broadband or home phone bill, and appear on a separate page that contains notices and information about the charges.

PaymentOne shares the Commission's desire to protect consumers from unauthorized charges and supports the specific rules proposed by the FCC to enhance bill clarity and disclosures to subscribers. These proposed rules reflect a measured approach addressing the confusion that consumers may experience from the manner in which third party charges are included on telephone bills, particularly as telephone companies have become enablers of multiple connected devices, applications and information. As demonstrated below, more extensive regulation is not necessary, and indeed would be detrimental.

Telephone billing provides significant value to consumers, small businesses and brand name merchants, and is a fast growing and increasingly important element of electronic and mobile commerce. Neither consumers nor businesses would benefit if this payment option is unnecessarily burdened or restricted. Telephone billing offers a viable and desirable option to consumers who may either not have credit or debit cards or do not wish to use them because of concerns about security or because of high interest rates or other charges by banks and credit card companies that consumers feel are onerous.

In the context of third party billing, the use of the word "cram" has become a grossly misused term. In the phone industry, the word "cram" has been used to describe any complaint of an unauthorized charge, even if it turns out that there was in fact authorization. In contrast, a charge to a credit card is not treated as unauthorized until there has been an investigation and that investigation has determined that in fact there was no authorization.

In PaymentOne's experience, most transactions that fall within the "cram" category were in fact authorized. The majority of reported "crams" are attributable to "buyer's amnesia," "buyer's remorse," or mere allegations of improper billings. Thus, reported "cram" levels typically are much higher than the actual level of unauthorized charges.

Even using these inflated "cram" statistics (which in fact include authorized billings), though, cramming still impacts only a small fraction of overall billings, and cramming levels are dropping. PaymentOne, other aggregators, merchants and the telephone companies have over the past several years implemented safeguards and protocols to protect consumers against unauthorized charges. During the past few years, the number and range of changes have notably increased, having a dramatic and measurable positive impact. PaymentOne has seen a 26% reduction in overall cram rates over the last twenty-four months. As PaymentOne and others in the industry continue to refine existing safeguards and implement new measures to guard against cramming, it is expected that cram rates and actual levels of unauthorized charges will continue to drop.

DISCUSSION

I. Benefits of Third party Billing/Importance to Commerce

(A) Increasing Role of Telephone Billing in a Digital Economy

Telephones, computers and other connected devices no longer are viewed merely as means of communication, but are now viewed as essential tools in commerce, with consumers and businesses increasingly using these devices to order services, purchase products, and otherwise manage and conduct their business and affairs electronically. As a result, E-Commerce is growing rapidly, becoming a key driver of the US and global economies.[3] According to the US Department of Commerce, US retail E-commerce sales reached $165.4 billion last year (14.8% growth over 2009), and there are forecasts that online shopping dollars, excluding travel, digital downloads and event tickets, will exceed $188 billion in 2011.[4] The worldwide market for mobile payments alone is estimated to reach $240 billion this year.[5]

Driven in large measure by this explosive growth in E-Commerce, including mobile commerce, the third party content market has also grown substantially in recent years. This growth underscores that the simplicity and security of carrier billing makes it a preferred choice.

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[3] *See e.g.,* Patricia Nakache, Commentary, *Why E-Commerce is Flourishing,* Forbes.com, August 3, 2010, (over the last decade, e-commerce sales have grown 19% per year, far faster than offline retail), http://www.forbes.com/2010/08/02/groupon-facebook-shopstyle-technology-ecommerce-social-media.html; *E-Commerce Growth Slows, But Still Out-Paces Retail,* WSJ.com (Wall Street Journal), March 8, 2010, (in 2010, e-commerce will account for 7% of all U.S. shopping, excluding auto, travel and prescription drugs, that could go as high as 20%), http://blogs.wsj.com/digits/2010/03/08/e-commerce-growth-slows-but-still-out-paces-retail/.

[4] *See*, U.S. Department of Commerce, as reported in *Healthy Growth for Ecommerce as Retail Continues Shift to Web,* eMarketer Daily Newsletter, March 17, 2011, eMarketer Inc., http://www.emarketer.com/Article.aspx?R=1008284.

[5] Juniper Research, as reported in *Sizing the Mobile Payments Market,* eMarketer Daily Newsletter, August 30, 2011, eMarketer Inc., http://www.emarketer.com/Article.aspx?R=1008566.

Many consumers and businesses value and wish to continue paying for purchases through their telephone bills, and for good reason. Telephone billing allows products and services to be provided without undue delay and without incurring unnecessary expenses, such as the expense of production and distribution of individual bills for each transaction. This is critical in the context of the small, low fee transactions that typify online purchases. Telephone billing fosters competition and benefits consumers and businesses by allowing them to quickly and easily access a variety of products and services at competitive prices. Small businesses in particular benefit from the economies and efficiencies afforded by telephone billing. Given the importance of the small business sector to overall economic growth, in these times of financial difficulty, the Commission should not further burden small businesses by unnecessarily restricting or limiting a preferred payment option.

(B) Granting a Monopoly to Banks and Credit Card Companies Is not Consistent with Consumer Preferences and Would Be Contrary to the Public Interest

There have been numerous stories in the media recently documenting consumer uproar over the decision of certain banks to impose a fee of up to $5.00 dollars per month for the use of debit cards. This policy was adopted by the banks in part to offset losses attributable to new rules that limit the fees banks can levy on merchants every time a consumer uses a card. It demonstrates a willingness by the banks to simply shift costs from merchants to consumers in order to maintain profit levels. This is but the latest complaint against an industry that has long drawn fire for, among other things, lax applicant screening and qualifications standards, low minimum payments that encourage over-spending, hidden and ever-increasing fees, and the exorbitant interest rates applied to late or missed credit card payments. Not surprisingly, credit card use is declining.[6] Clearly, consumers and businesses alike benefit from having other payment methods on which to rely.

The simple fact is that cash, checks and cards are of limited value in an increasingly "virtual" economy, with more and more consumers and businesses turning to less risky and more convenient payment methods such as telephone billing. According to an October 2011 survey commissioned by PaymentOne, nearly 79% of decisive consumers would be more inclined to purchase online if there were safer and easier alternatives to credit cards.[7] In fact, the majority of consumers see credit card security concerns (identity theft, fraud, etc.) as the most significant barrier to adoption of online commerce. When asked what payment method they found more secure, consumers viewed charging small purchases to a phone bill four times more secure than loading card data or bank information on the phone to make a payment.[8]

Approximately 12% of the population does not even own a credit or debit card.[9] Others choose an alternative form of payment precisely because they do not want to use a credit card or similar card in connection with a particular product or service. The reasons for not wanting to provide credit information are varied, ranging from restrictions on the card (it might be intended

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[6] Sandra Block, *More consumers just say no to credit cards,* USA Today, February 8, 2010, (consumers becoming increasingly disenchanted with credit card industry practices…credit card usage is slowing), http://www.usatoday.com/money/perfi/credit/2010-02-08-creditcards08_CV_N.htm.

[7] Javelin Strategy & Research, October 2011 Survey, *How Consumers Prefer to Pay Online – Carrier Based Billing as a Payment Option,* ("2011 Javelin Survey"), at 2.

[8] 2011 Javelin Survey at 14.

[9] 2011 Javelin Survey at 2. The Survey shows that among certain demographics of the population, the gap is larger. For example, about 19% of consumers with less than $50,000 annual income, do not own a credit or debit card. 2011 Javelin Survey at 9. *See also FDIC National Survey of Unbanked and Underbanked Households*, Executive Summary at 3-4, Federal Deposit Insurance Corporation, December 2009 ("[a]n estimated 7.7 percent of U.S. households, approximately 9 million, are unbanked" and do not have access to checking or savings accounts or other mainstream financial products while "[a]n estimated 17.9 percent …, roughly 21 million, are underbanked" and rely on more costly alternative financial services, even though they have checking or savings accounts at mainstream financial institutions. Additionally, "certain racial and ethnic minorities [are] more likely to be unbanked than the population as a whole").

for business purposes only), to concern about disclosure of personal/credit information due to the rampant identity theft, fraud and other online security issues referenced above, to concern about providing credit card information to any entity other than certain companies, to high interest rates that apply to every new purchase if any part of a monthly statement is not paid in full.[10] For consumers who either have no credit card or prefer not to use it over the internet, billing solutions that alleviate such concerns, such as PaymentOne's Anyphone™ billing platform, constitute one of the few viable means for participating in E-commerce through the purchase of products and services.

It is not just consumers that view telephone billing as a preferred payment method. Businesses also value the safety and convenience of carrier billing. Consumers and businesses suffer direct harm when companies such as PaymentOne encounter difficulties in facilitating billing through the local telephone company. Each week, PaymentOne is contacted by dozens of consumers that are frustrated because they are unable to utilize telephone billing to make online purchases.

Moreover, telephone billing offers consumers and businesses protections and advantages, some of which are not available through credit card billing. A phone number, unlike a credit card, cannot simply be stolen and used fraudulently. As discussed below, additional information and action is required that is then subject to authentication and verification protocols. In contrast, stolen credit cards can in some cases be used with no additional verifiable information being provided. With telephone billing, third party charges can be easily disputed, and such

[10] In 2009, during the height of the financial crisis, credit and debit card fraud was the primary fear of Americans, superseding concerns over terrorism, computer viruses, and personal safety, Lieberman Research Group, *Unisys Security Index: United States,* 25 September 2009 (2H'09) at 6, Unisys Corporation. In 2011, bankcard fraud and identity theft remain as leading areas of concern, along with national security in relation to war or terrorism, Continued . . .

disputes typically are resolved more expeditiously and more favorably to the end user than is the case with other payment methods. Moreover, consumers can ask for credits and dispute charges months after they appear. Equally important, phone companies do not charge the exorbitant interest that some credit card companies do for late or missing payments. Consumers are also protected in that basic telephone service cannot be cancelled due to non-payment of third party charges.

II. Cramming Levels are Overstated

The Commission states in the NPRM that cramming is a significant ongoing problem, and that the volume of consumer complaints show that additional safeguards are necessary.[11] PaymentOne concurs that cramming warrants the continuing attention of the industry, but much of the data on which the Commission relies is stale. Current data shows that cramming is not as widespread as many allege, and that cramming impacts only a small fraction of overall billings. Moreover, as shown in the next section, cramming levels are falling due to safeguards and practices recently put in place by PaymentOne and other aggregators, the telephone companies, and merchants.

In the context of third party billing, a "cram" typically includes far more than documented instances of unauthorized charges. Indeed, mere allegations of unauthorized charges, inquiry attributable to "buyer's amnesia," and requests to cancel attributable to nothing more than "buyer's remorse" are typically included in cram totals. This contrasts sharply with the credit card industry, which has an established dispute process that requires the complaining consumer to certify that the charge was unauthorized, and subjects any amounts initially

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Lieberman Research Group, *Unisys Security Index™: United States,* 21 February 2011 (Wave 1H'11) at 5, Unisys Corporation.

refunded to recapture if subsequent investigation (which allows for merchant input) shows the charge was indeed legitimate.

For example, because charges might not appear on the telephone bill until over one month after the purchase, it is not uncommon for a consumer or business to initially question a charge, even though the transaction did occur and there is a recording or other evidence of an authorized purchase. Such instances of "buyer's amnesia" do not entail unauthorized charges, yet are typically included in cramming totals. Similarly, consumer or business inquiry and cancellations/credits driven by "buyer's remorse" and attributable in part to the generous refund practices and policies typical in the industry are included in "cramming" totals, even though the underlying charges were indeed authorized. As discussed below, PaymentOne's customers are required to participate in verification programs and a true cram is rare; most transactions that are labeled as crams are in fact authorized and the consumer's complaint would be no different if the charge were via credit card instead of a phone bill. As a result, in the context of third party billing, PaymentOne's experience is that the level of actual unauthorized charges is materially below the attributed cram level. Even using these inflated cramming figures, the overall cram rate for transactions processed by PaymentOne was well below 1% as of the second quarter of this year. And, as shown below, cram levels are falling sharply due to measures implemented over the past several years by PaymentOne and others in the industry.

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[11] NPRM at 1-2.

III. Efforts to Combat Cramming are Succeeding

(A) PaymentOne Has Adopted Safeguards and Protocols to Protect Consumers and Businesses Against Unauthorized Charges

PaymentOne, like others in the industry, has on an ongoing basis implemented processes and protocols and contractual requirements designed to minimize the potential for unauthorized charges, and allow for instances of cramming to be identified and addressed in an effective manner. Over the past few years, PaymentOne has intensified this effort by putting into place a series of requirements that its customers must satisfy before PaymentOne will process and forward for billing a sales transaction. This intensification has resulted in a significant reduction in cram levels over the past twenty-four months, a trend that PaymentOne expects will continue as processes are continuously refined and new measures are adopted.

Potential customers of PaymentOne are sent a 17-page document that requests pertinent information about the service provider and its offerings. That includes information concerning, among other things: the company (contact information, ownership, management, corporate documents, etc); billing history, including complaint history and suspensions/terminations; the products/services to be sold, including pricing, marketing, verification and inquiry information and procedures; and regulatory filings and compliance. PaymentOne then reviews and verifies the information using a 100-point checklist. The checklist and related screening practices are continuously refined to reflect changing industry practices and requirements, as well as telephone company and regulatory requirements. The information is then included in the application to the telephone company.

The steps taken to verify the information received from the service provider include, but are not limited to, the following:

- due diligence on company officers

• verify corporate address and contact information

• review program marketing materials

• sign-up by PaymentOne employees for programs offered online

• confirm verification company and review inquiry procedures

• perform test call to inquiry center

• review historical billing complaints (if any)

• verify regulatory filings.

In connection with online sales, the review process entails, among other things, checking the terms and conditions of service; reviewing the service provider's website URL, which must be the same as that shown in approved marketing materials; purchasing products from the provider online; and testing 800 numbers. PaymentOne requires that the verification information include the following: first and last name; date; billing telephone number ("BTN"); address, including street, city, state and zip code; confirmation of legal age; confirmation of authority to have the purchased product or service billed to the end user's account; a complete, clear and conspicuous description of the product or service; explicit acknowledgement and consent that the charges will appear on the end-user's telephone bill; and affirmative acceptance of the offer and related terms and conditions. Also required to confirm identity and authorization by the purchaser is one of the following: date of birth; last four digits of social security number; or a telephone call (either live or automated) to the end user at the telephone number to be billed.

Written verifications must be contained in a document that is separate or separable from any inducement or other material not directly related to the verification of the transaction or, if the document is electronic, in the form of a separate webpage or screen. All verification must be completed by the end user and cannot be pre-populated in the verification document.

PaymentOne also mandates double opt-in, with the following information among that required to be contained in the re-confirmation of the product or service being sold: the name of the product or service; pricing information; any minimum term or billing period; a clear statement that the end-user is being asked to confirm the purchase of the product or service; and an Internet hyperlink, a confirmation button, a check box, a toll-free telephone number or other means by which the end user can confirm the purchase. The price of the product or service must be displayed on or in the immediate proximity of the mechanism used to confirm the purchase.

With respect to telemarketed sales, outbound/inbound sales scripts are reviewed, as are welcome and fulfillment packages. Third party verification ("TPV") scripts are reviewed for adherence to telephone company requirements regarding language and verbiage. When verifying through oral means, the verification process must be recorded, with the prior consent of the end user (or the person authorized by the end user), and the verification must be conducted in the same language that was used in the underlying transaction. Verification information must include, at a minimum, the end user's name, complete mailing address, BTN, and confirmation that the end user is of legal age. The verification should include, among other things, an initial statement that the purpose of the verification is to confirm the end-user's intention to accept the sales offer; (ii) a clear and conspicuous disclosure to the end-user of the material terms of the product or service, including but not limited to associated charges and the fact that the charges will appear on the end-user's telephone bill; (iii) express consent to obtain the product/service and have the charges appear on the end-user's telephone bill; and (iv) confirmation that the person is the end-user or is authorized by the end-user to purchase the product/service and have the charges included on the end-user's telephone bill.

Once billing commences, five TPV recordings are reviewed for adherence to the approved script, clarity, quality, and clear description and acceptance of the product or service and related terms. PaymentOne also contacts the third party verification company hired by the service provider to confirm that the verification company will indeed be providing verification services in connection with sales of the products or services in question. PaymentOne requires that the verification company: (i) be completely independent of the service provider; (ii) not be directly or indirectly managed, controlled, directed or owned by the service provider, wholly or in part; (iii) not derive commissions or other compensation based on the number of sales confirmed or otherwise have any financial incentive in the completion of the sale; and (iv) operate at a location physically separate from that of the service provider.

Outlined below are some of the specific steps that are required to be taken before PaymentOne will forward transaction data to the telephone company for inclusion on the phone bill:

Online Sales	Telemarketed Sales
An online offer presented requires the purchaser to complete a registration form with name, address, telephone number and a personal identifier such as Date of Birth or last four digits of telephone number.	Telemarketer dials out to telephone numbers that are billable (prescreened to comply with FTC Do Not Call List conditions)
The terms and conditions of the offer are presented and must be agreed to by the purchaser in order to proceed. Prior to completing the purchase, the purchaser is required to re-confirm the purchase of the product or service -- Double Opt-In. During this process, the information provided by the purchaser is authenticated by PaymentOne's IVS (identity verification service) Authentication Process. The IVS process validates that the data entered by the purchaser.	Telemarketer uses a sales script that is pre-approved by both by PaymentOne and the LEC. Script must comply with pre-established LEC requirements. Where the consumer/business indicates an intent to purchase the product or service, the telemarketing representative conferences in a Third party Verification representative or IVR (integrated voice response) process to verify the sale. This process is recorded. Clear verbal authorization for the transaction is obtained pursuant to a pre-approved verification script. The TPV process affords the purchaser the option to not accept the service or product. The process also

Transactions that fail this process are deemed incomplete and the consumer is not billed.	provides the purchaser information on who to contact and a toll free number in case questions arise or cancellation is desired at a later time.
Billing data is submitted by the merchant to PaymentOne for processing to the Local Exchange Carriers ("LECs"). Processing by PaymentOne includes checking to see if the telephone number submitted for billing has any associated blocks that would prevent billing. This includes checking for consumer requested third party blocks. Successfully processed data is submitted by PaymentOne to the LECs.	TPV recordings are checked by the merchant to ensure that a valid sale was captured. Transaction data is submitted to PaymentOne by the merchant for processing to the LECs. Successfully processed data is submitted by PaymentOne to the LECs.

Once the customer is allowed to start billing, PaymentOne monitors the number of consumer, regulatory and telephone company inquiries and complaints associated with each customer, in addition to certain transaction metrics. If the number of complaints/inquiries or transaction metrics exceeds certain thresholds, then PaymentOne may suspend new transaction processing, and/or require the service provider to submit an action plan that outlines the measures it will take to improve performance. If the service provider fails to meet this objective, PaymentOne will either suspend or terminate new transaction processing on behalf of the service provider.

With respect to online or other electronic transactions, as indicated above, PaymentOne has instituted an authentication protocol pursuant to which PaymentOne validates and authenticates the transaction and identity of the consumer on the front end, significantly reducing the potential for unauthorized transactions. This is in addition to the above-described authorization and verification procedures required of PaymentOne's service provider customers.

PaymentOne also has retained the services of an independent global management consulting, technology services and outsourcing company to monitor PaymentOne's screening, sign-up and monitoring practices and procedures. The monitoring firm's duties include performing monthly compliance and quality control tests.

Many of the above safeguards and processes and additional protections are built into PaymentOne's current standard billing contract with its service provider customers. For example, the contract requires each customer to represent and warrant that all transaction records submitted to PaymentOne are true and correct and accurately reflect proper charges legally owed by the consumer. Before submitting billing records to PaymentOne, customers are required to make specific disclosures to consumers and obtain proper consent and authorization for each charge. Customers are expressly prohibited from submitting billing records for products or services that have not been properly authorized by or on behalf of the end user or that have excessive customer service or adjustments. PaymentOne's customers are required to provide PaymentOne with reasonable access to information and data to enable it to, among other things, monitor, investigate and resolve consumer, regulatory and telephone company complaints/inquiries. The billing contract also subjects PaymentOne's customers to specific telephone company complaint thresholds and related billing and reporting requirements.

(B) Cramming is on the Decline

The above described PaymentOne practices and policies have achieved tangible results. There has been a substantial decrease in instances of unauthorized charges and related inquiries and complaints. In connection with the transactions it processes, PaymentOne has seen a drop in overall cram rates of approximately 26% from the second quarter of 2009 to the second quarter of this year. PaymentOne expects cram rates to continue to decline, particularly as existing practices are refined and new practices implemented.

IV. Further Preventative Measures Can Significantly Reduce Cram Levels

(A) Changes in Certain Marketing and Sales Practices Can Further Reduce Cramming

In addition to implementing the policies and protocols described above, PaymentOne has also targeted certain marketing and sign-up practices that in the past have tended to result in higher cram levels. Elimination or modification of these practices on an industry-wide basis would significantly reduce cramming. Indeed, PaymentOne customers that have implemented the below discussed practices typically have experienced even further reductions in complaints of unauthorized billing.

(1) Offsite Incentive Signups

Offsite incentive marketing is a practice whereby an online consumer or business is incented (usually by the offer of something free) to purchase a particular service or product, but the actual registration and sign-up occurs not on the service provider's website but on a different website. From PaymentOne's experience, this leads to consumer confusion which in turn results in "cram" levels that are often 4-5 times higher than where the user signs up on the service provider's own website. This problem, of course, exists independently of the mode of billing – be it via credit card, debit card or phone billing. As a result, PaymentOne now prohibits its customers from engaging in offsite incentive marketing. PaymentOne also restricts the sale and marketing of certain services which in the past have been shown not to be valued by consumers and have been associated with higher cram levels, such as voice mail services and certain email services. These practices should be implemented on an industry-wide level.

(2) Standardized Verification of Telemarketing Sales

As another example, PaymentOne requires that its customers engaged in outbound telemarketing sales to have those sales verified by an independent third party verification company. This is typically accomplished using either live person or an IVR[12]-based automated verification. Use of IVR-based automated verification eliminates the human variable -- the possibility that confusion will be caused because the verification company representative is speaking too fast, speaking too softly, otherwise is difficult to understand, or goes off script, Confusion leads to increased alleged-cram levels. From PaymentOne's experience, the use of IVR based automated verification, which eliminates the human variable, results in significantly lower cram rates. PaymentOne encourages all of its customers to use automated verification, and recommends and would support an industry standard requiring IVR based automated verification for all outbound telemarketing sales.

The above examples, coupled with the reduction in cramming achieved through the safeguards and protocols instituted by PaymentOne, underscore that assertions of cramming stem not from the particular payment platform used, but from the marketing, sign-up, verification and authentication practices used in connection with the sale. If those practices are deficient, then cramming levels will be higher regardless of whether the underlying billing platform is based on telephone billing, credit cards, debit cards, or some other payment method. By the same token, implementing improvements in these practices, as PaymentOne has done over the last two years, can significantly reduce cram levels.

(B) PaymentOne Supports the Specific Rules Proposed by the FCC to Minimize Consumer Confusion

The Commission in the NPRM proposes rules that would require wireline carriers to notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their websites, of the option to block third party charges if the carrier offers that option, and place

[12] Integrated Voice Response

charges from non-carrier third-parties in a bill section separate from carrier charges.[13] The Commission also proposes rules that would require carriers, both wireless and wireline, to include on all telephone bills and on their websites the FCC's contact information for the submission of complaints.[14] PaymentOne supports these proposed rules. Minimizing the potential for consumer confusion benefits all parties to the process. For its part, PaymentOne requires that its customers provide to PaymentOne or the telephone company information that will enable billing statements to end users to include: (i) clear identification of the customer, (ii) a clear description of the products or services billed, (iii) a clear identification of the charges, (iv) the customer's telephone number, and (v) a toll free number that end-users may use to make inquiries concerning products, services and rate structures.

CONCLUSION

The Commission in the NPRM asks whether current industry practices or voluntary industry guidelines can address cramming issues successfully.[15] As shown above, PaymentOne has over the past several years implemented more stringent customer screening, intake, and monitoring practices, and has tightened authorization and verification protocols. PaymentOne has also taken steps to require its customers to improve their marketing, sales and registration practices, and has prohibited certain practices that have been shown to result in higher rates of complaints of cramming. These measures, along with other safeguards and policies voluntarily adopted and put in place by PaymentOne and others in the industry over the past several years, have had a measureable impact in reducing instances of unauthorized charges, a trend that PaymentOne expects will continue as existing safeguards are refined and new measures are

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[13] NPRM at 16-19.

[14] NPRM at 19-20.

adopted across the industry. In light of these successes, and considering the importance of telephone billing to businesses and consumers and to electronic and mobile commerce in general, the Commission should refrain at this time from adopting regulations beyond those specific rules proposed in the NPRM designed to improve notice and disclosure to consumers and thereby minimize consumer confusion.

Respectfully submitted,

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[15] NPRM at 22.