



POLICY & ACTION FROM
CONSUMER REPORTS

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Notice
CC Docket No. 11-116 (Cramming)
CG Docket No. 09-158 (Disclosure)
CC Docket No. 98-170 (Truth in Billing)

Dear Ms. Dortch,

Consumers Union, the public policy and advocacy division of *Consumer Reports*®, submits this written *ex parte* to provide further evidence that the Commission must address unauthorized charges on wireless phones. Unauthorized charges on a consumer's telephone bill by third parties, otherwise known as "cramming," has been a problem since the 1990s. In 1998 the FCC responded by working with the telephone industry to create a set of voluntary standards to prevent cramming. Additionally, the FCC adopted Truth-in-Billing requirements in 1999 which "required telephone bills to contain 'full and non-misleading descriptions' of third-party products and services and a clear indication of the third-party company responsible for each charge."¹ Despite these actions to address the problem, cramming has continued throughout the years.

The Senate Committee on Commerce, Science, and Transportation's investigation into cramming uncovered that despite the Commission's truth-in-billing requirements, "thousands of consumers still regularly complain to the Federal Trade Commission and the FCC about cramming, while state and federal authorities continue to bring law enforcement actions against individuals and companies for cramming. These cases have shown that consumers continue to be scammed out of millions of dollars through cramming."²

However, not only are consumers being cheated on their landline telephone bills, evidence suggests that wireless cramming is also a problem. For example, 16% of the cramming complaints received by the FCC have come from wireless consumers.³ The Federal Trade Commission (FTC), who also handles cramming complaints, received about 10% of its cramming complaints from wireless consumers.⁴ State agencies that assert jurisdiction over wireless service contracts have also noted the impact of cramming on wireless consumers. Between 2009 and 2010, the California Public Utilities Commission received 5% of its cramming complaints from wireless consumers.⁵ From 2006 to 2011, the

¹ United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff, Staff Report for Chairman Rockefeller, "Unauthorized Charges on Telephone Bills" at 4 (July 12, 2011) ("Cramming Investigation") (quoting *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order, 14 FCC Rcd. 7492 (May 11, 1999)).

² *Id.* at i.

³ *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges*, CG Docket No. 11-116, 4 FN 11 (2011) ("NPRM").

⁴ *Id.*

⁵ *Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose*, Hearing Before the S. Comm. on Commerce, Science, and Transportation, 112th Cong. 127 (2011) ("Cramming Hearing"); NPRM at 13.

Florida Attorney General's Office received 24% of its cramming complaints from wireless consumers.⁶ Finally, from 2005 to 2011 the Vermont Attorney General's Office received 16% of its cramming complaints from wireless consumers.⁷

These numbers indicate that real people are being affected by cramming, and the FCC should support a zero-tolerance policy. In fact, some states have been vigilant in their fight against wireless cramming. Between 2006 and 2011, the Florida Attorney General received 174 complaints of wireless cramming.⁸ Based on those complaints, an investigation by the Florida Attorney General found that thousands of Floridians had been the victims of cramming.⁹ The investigation resulted in settlements between the Florida Attorney General and wireless carriers and third party billers worth millions of dollars in restitution to consumers.¹⁰ Moreover, there is currently an ongoing dispute in Texas arising out of thousands of consumers being impacted by cramming. The Texas Attorney General has filed a lawsuit claiming that the defendants' text message cramming scheme has led to "millions of dollars in unauthorized mobile phone charges," impacting thousands of Texans.¹¹

In addition to the sheer number of cramming incidents that occur throughout the United States, there is significant anecdotal evidence about people's experiences with cramming, demonstrating the issue's national scope, affecting many walks of life:

- Monique Eigenbauer, a 21-year-old attending the University of Central Florida, was charged nearly \$60 on her cell phone during five months for "long life love tips," a service she never requested or authorized. After contacting AT&T, who credited her account for the amount, the third-party vendor resumed charging her a month later for an additional four months. "AT&T took care of everything, but it was a hassle," she said. "My problem is not specifically with the carrier, but with the practice. How many people are being defrauded by these third-party companies and not even know about it?"¹²
- Janie Smoter of Bonney Lake, Washington immediately starting receiving text messages after she went to a coupon website that required her cell phone number. The texts were varied ranging from daily horoscopes to love lines. Smoter declined every single offer of service from the texts. Nevertheless, when she checked her wireless bill she found a "premium text message" charge of \$9.95 for that day. "It's infuriating," Smoter said. "I

⁶ Cramming Hearing at 127.

⁷ *Id.*

⁸ Keith Vanden Dooren, *Florida Cramming: Solutions*, FLORIDA OFFICE OF ATTORNEY GENERAL, slide 2 www.ftc.gov/bcp/workshops/cramming/FloridaCrammingSolutionsToFTC.pps ("Florida Solutions").

⁹ Press release, *Florida Attorney General Sues Nationwide Internet Cramming Company*, FLORIDA OFFICE OF THE ATTORNEY GENERAL, Nov. 15, 2007, <http://myfloridalegal.com/newsrel.nsf/newsreleases/5339829BD555273585257394004E9DEC>.

¹⁰ *Mobile Content Providers Settle Cramming Suits*, CONSUMERAFFAIRS.COM, Sept. 20, 2010, http://www.consumeraffairs.com/news04/2010/09/mobile_content_providers_settle_cramming_suit.html; *Wireless Carriers Agree To \$1.5 Million Cramming Settlement*, CONSUMERAFFAIRS.COM, June 24, 2009, http://www.consumeraffairs.com/news04/2009/06/wireless_cramming.html; *Verizon Signs Florida Anti-Cramming Agreement*, CONSUMERAFFAIRS.COM, July 12, 2007, http://www.consumeraffairs.com/news04/2007/07/fl_verizon.html.

¹¹ *Texas v. Eye Level Holdings*, Cause No. 0-1-Gv-11-000268, Pl's Pet. 28-29 (45th Judicial District Court, Travis Cnty.); Press release, *Texas Attorney General Seeks Halt to Fraudulent Text Messaging Scheme*, ATTORNEY GENERAL OF TEXAS, Mar. 10, 2011 <https://www.oag.state.tx.us/oagnews/release.php?id=3663>.

¹² Walter Pacheo, *Mysterious 'cramming' charges anger cellphone users*, ORLANDO SENTINEL, Feb. 24, 2012, http://articles.orlandosentinel.com/2012-02-24/business/os-cramming-cellphone-20120227_1_third-party-charges-carriers-verizon-wireless.

spent hours trying to get this resolved. And I was lucky because I caught it right away. I was reading stories of people online and some of them had hundreds of dollars on their bills from this company and they weren't able to get any resolution."¹³

- Senator Tom Udall of New Mexico described how one of his constituents from Santa Fe contacted him after finding \$170 in fraudulent, unauthorized premium text message charges on his wireless bill for a trivia game he did not want and did not sign up to receive. The founders of the company billing the constituent had previously been involved in a class action lawsuit for a separate landline cramming scam. After receiving a refund, the constituent told the Senator, "My main goal [is] to get this practice stopped. It was nice to get the money back, but the bigger deal by far is to put these scams out of business."¹⁴
- A resident of Port St. Lucie, Florida found an unauthorized charge from Voicemail Solutions for \$13.97 on her AT&T phone bill. After getting no results from AT&T, she called the third party billing company, Enhanced Services Billing, Inc., who said that her husband had ordered the services over the Internet on a given date. She responded that it was impossible; her husband had died three months before the date.¹⁵

The complaints received by the federal and state agencies and anecdotal evidence clearly justify equal applications of cramming protections to wireless consumers. Through its expertise and experience with the issue of cramming and how cramming has developed in the landline industry, the FCC may use its predictive judgment to impose cramming rules on wireless carriers.¹⁶ It is imperative the FCC get ahead of the increasing number of cramming incidents on wireless devices and protect users of wireless devices before they are victims of fraudulent charges. Thus, we urge the FCC to take action to protect wireless users from the same predatory practices that have plagued landline users for years.

Sincerely,



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¹³ Herb Weisbaum, *FCC proposes crackdown on phone-bill cramming*, MSNBC.COM, July 12, 2011, www.msnbc.msn.com/id/43728825/ns/business-consumer_news/t/fcc-proposes-crackdown-phone-bill-cramming/#.T3yOPdkZm9s

¹⁴ Cramming Hearing at 116-17 (statement of Sen. Tom Udall).

¹⁵ Florida Solutions at slide 5.

¹⁶ See *Melcher v. FCC*, 134 F.3d 1143, 1151, 1152 (D.C. Cir. 1998) (“[O]ur review of the FCC’s exercise of its predictive judgment is particularly deferential, [especially when] the FCC must make judgments about future market behavior with respect to a . . . new technology, [where] certainty is impossible”).