

**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

***EX PARTE* COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

These *ex parte* comments of the National Association of State Utility Consumer Advocates (NASUCA) address continuing widespread cramming on wireless phone bills. These comments are responsive to the *ex parte* filing by CTIA – The Wireless Association® on July 25, 2012. They supplement NASUCA’s earlier comments in these dockets,¹ which cited repeated earlier examples and reports of widespread cramming on wireless phone bills.² The earlier comments also explained why reliance on voluntary compliance, Mobile Marketing Association guidelines and “double opt-in” will not correct the problem and hence not give consumers the protection they need and deserve.³

Recent experience confirms the continuing widespread cramming problem on wireless bills. An analysis of nearly five million wireless lines by NASUCA member and

¹ NASUCA Initial Comments in Response to Notice of Inquiry (Oct. 13, 2009), pp. 42-57; NASUCA Initial Comments in Response to Notice of Proposed Rulemaking (Oct. 24, 2011); NASUCA Reply Comments in Response to Notice of Proposed Rulemaking (Dec. 5, 2011); NASUCA Initial Comments in Response to Further Notice of Proposed Rulemaking (June 22, 2012); NASUCA Reply Comments in Response to Further Notice of Proposed Ruling (July 20, 2012).

² NASUCA 6-22-12 Comments, pp. 9-11.

³ NASUCA 6-22-12 Comments, pp. 13-16; NASUCA 12-5-11 Comments, pp. 8-12.

Chicago-based Citizens Utility Board (CUB), in conjunction with Houston-based wireless industry research group Validas,⁴ showed a total potential cost to U.S. consumers due to wireless cramming of up to \$59 million annually. As explained by CUB, the analysis took a very conservative approach to identifying potentially fraudulent charges, using only companies that have been the subject of phone-fraud litigation. For the twelve-month period ending July 31, 2012, the analysis showed that .30 percent of the lines reviewed nationally had potentially fraudulent charges. The analysis also showed that the average crammed charge was \$5.10 per month.⁵

According to a CUB press release less than a month ago, crammers gain access to bills through text messages claiming prize winnings, ringtone downloads and other cellphone extras, and websites offering “free” services or a sweepstakes entry. Customers who respond to these lures, and even those who don’t, get hit with vaguely worded charges such as “premium texting,” “download charge,” and “data.” The press release quoted CUB Executive Director David Kolata as saying: “As they’re driven from landline bills, scam artists may see our cellphones as a new frontier for fraud.”⁶

Also very recently, the Delaware Attorney General has similarly warned wireless consumers about unsolicited third-party text message charges, often in the amount of \$9.99 per month or less, for items described as “Trivia Alerts,” “Military History” or

⁴ The analysis reviewed 4.7 million lines from residential and corporate accounts, using Validas’ patented “VERA” analytics technology.

⁵ The \$59 million figure represents the product of the .30 percentage times the average annualized cramming charge (\$5.10 x 12, or \$61.20) times the number of national wireless subscribers (321,700,000, per CTIA estimate, see press release, Oct 11, 2012, “Consumer Data Traffic Increased 104 Percent . . .” <http://www.ctia.org/media/press/body.cfm/prid/2216>).

⁶ Press release, Citizens Utility Board, “Analysis: Frequency of ‘Cellphone’ Cramming Scam Doubles in Illinois, CUB Concerned Wireless Customers Targeted as Landline Laws Tighten,” December 4, 2012, see http://www.citizensutilityboard.org/newsReleases20121204_CellphoneCramming.html.

“Horoscopes,” or with vague descriptions such as “premium messaging.” Such cramming sometimes occurs when a consumer enters his or her wireless phone number in order to receive ringtones or other online services. Other times, there is no apparent reason for the crammed charges.⁷ Earlier NASUCA comments have noted earlier press and other reports of similar widespread scams.⁸

This additional evidence of widespread cramming on wireless bills supports NASUCA’s recommendations that the Commission: (i) adopt a rule explicitly and directly prohibiting the placement of unauthorized charges on phone bills, regardless of the technology used to provide the communications service, including a provision that a claimed “authentication” or “verification” is not a defense to an enforcement action if the charges at issue were in fact unauthorized, and including a provision reaching not only third-party providers who assess unauthorized charges but also billing companies and billing agents who pass such charges along to consumers; (ii) continue to bring appropriate enforcement actions at the federal level, including but not limited to fines sufficient to deter such conduct and restrictions on or forfeiture of offending communications service providers’ operating authority; (iii) encourage the states to bring appropriate enforcement actions, with like remedies and for like purposes; and (iv) look to the Federal Trade Commission for supportive enforcement actions, when and as needed.⁹

⁷ “AG warns of ‘smishsmashing’ and ‘cramming,’” *Newark Post Online* (Dec. 12, 2012), http://www.newarkpostonline.com/news/article_07560898-44ac-11e2-b332-001a4bcf887a.html?mode=story.

⁸ NASUCA 6-22-12 Comments, p. 10 & nn. 29-30.

⁹ See NASUCA 7-20-12 Comments, pp. 15-18; NASUCA 6-22-12 Comments, pp. 17-22.

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