

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	CG Docket No. 98-170

COMMENTS OF CONSUMERS UNION

I. INTRODUCTION

Consumers Union, the policy and advocacy arm of *Consumer Reports*, welcomes the opportunity to submit the below comments to discuss developments since the Federal Communications Commission (“Commission”) last solicited comment on the issue of cramming. Our organization has been actively involved in the issue of cramming since it first emerged as a problem in the 1990s. Since then, we have participated in forums and rulemakings before the FCC, including the 2004-2005 truth in billing proceeding, the FCC’s broader inquiry in 2009-2010, and the 2011-2012 rulemaking proceeding on cramming. Over the past several months, we have participated in cramming workshops before both the Federal Trade Commission (“FTC”) and the FCC, where we have advocated for greater transparency in billing, a no-cost option to block third-party

charges, a more careful and reliable authentication process for third-party service charges, and greater legal protections for consumers who are held responsible for unauthorized charges.

CU submits these comments today to reiterate the need for additional wireless cramming protections, discuss developments since the time the FCC last solicited comment on the issue, and provide some recent examples of consumers who have been adversely affected by unauthorized wireless charges. In doing so, we highlight some reasons that carriers' current voluntary efforts may not be sufficient to protect wireless consumers from cramming.

II. ADDITIONAL CRAMMING PROTECTIONS ARE NECESSARY IN THE WIRELESS SPACE

The foremost unaddressed concern at this time is the need for additional protections for wireless consumers against unauthorized third-party charges. We were pleased that the Commission moved forward to address cramming on landline phones last year, but we believe that more proactive measures are necessary on the part of the FCC, as well as the FTC, in order to prevent these unauthorized charges from ending up on consumers' wireless bills. Unfortunately, existing truth-in-billing protections for wireless services do not solve the problem of cramming on wireless bills fully; they merely help consumers identify the problem *after* it has already occurred. As we have indicated in comments to the FTC and FCC previously, we believe that more proactive measures are needed to prevent unauthorized charges from appearing on bills in the first place.

Additional wireless cramming protections are especially important in light of the high rate of cell phone adoption among consumers. According to the FCC's own recent figures, many consumers have decided to "cut the cord" and replace their landline service

with wireless voice service: thirty-four percent of adults lived in wireless-only households by the second half of 2012.¹ Perhaps more astoundingly, approximately ninety-one percent of American adults now own some kind of cell phone, with cell phone adoption rates especially high among certain low-income and minority populations.²

Indeed, one trend we have sought to highlight in our advocacy on this issue is the high incidence of cramming abuses committed against consumers in communities of color. As we have noted previously, a national poll conducted last year confirmed that “because of the especially high rate of cell phone usage among African Americans and Latinos, these communities are especially hard-hit by practices like cramming,” and that “over a third of both African-Americans (35%) and Latinos (34%) report that they have been victims of cramming.”³ For this reason, we have advocated on behalf of these communities as part of our broader advocacy on behalf of all consumers.

Furthermore, wireless cramming protections are especially important in light of the ease with which cramming can occur. Unsolicited text messages (“text spamming”) and deceptive websites both contribute to the problem, and – as the FTC has explained previously in its comments to the FCC – this means that “not all ‘double opt-in’ procedures require that a consumer affirmatively respond to a confirmation text message.”⁴ Crammers sometimes use websites to lure consumers into providing their cell phone number in exchange for participating in online contests or auctions, or in exchange for free giveaways. These deceptive websites fail to provide customers with a clear and

¹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34 (rel. Mar. 21, 2013).

² See Lee Rainie, *Cell Phone Ownership Hits 91 Percent of Adults*, PEW RESEARCH CENTER, June 6, 2013, <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults/> (last visited Nov. 21, 2013).

³ See Letter of George Slover to Federal Trade Commission (Mar. 23, 2013).

⁴ See Comments of the Federal Trade Commission in CG Docket 11-116 (July 20, 2012) at 4.

conspicuous disclosure that consumers will be charged for a subscription service. In this way, the simple act of entering a phone number on a website can result in the placement of a monthly recurring charge directly on a bill with little further action on the part of the consumer.

Finally, we note that industry participants continue to reiterate that there are many valid and innovative third-party services that benefit consumers in the wireless space and that consumers want to be able to use such services. We agree that consumers should be able to make use of the third-party services of their choosing, but believe that further measures are necessary to help distinguish between services that consumers *actually* want and unauthorized charges that consumers did not ask for and may not even be aware of. Unfortunately, as we discuss below, our conversations with consumers since the FCC last solicited comments in this proceeding indicate that consumers are continuing to experience charges for third-party services they do not want or authorize.

III. OUR ONGOING CONVERSATIONS WITH CONSUMERS SUGGEST THAT CARRIERS' EXISTING VOLUNTARY EFFORTS MAY BE INSUFFICIENT TO PROTECT WIRELESS CONSUMERS

Wireless carriers claim that their “double opt-in process” prevents most unauthorized charges from occurring, but we continue to hear stories from consumers that suggest otherwise.⁵ For example:

- Maria M. of Chula Vista, California said that she inputted her phone number in an online survey with promises of winning an iPod, and wound up with a \$10 monthly charge to her cell phone bill for a movie trivia site she had never heard of. Maria also complained to us that because she enrolls in autopay online, she was frustrated that she was only able to catch the charge after three months. It was

⁵ These stories have all been submitted to Consumers Union since August 2012 and are on file with the organization.

not until following up with several phone calls to her wireless carrier that Maria was able to finally obtain a full refund.

- Violet A. of Burton, Michigan caught a recurring \$9.99 monthly charge on her wireless bill for a horoscope service – as well as three other separate \$9.99 charges for other unrecognizable services. She contacted her cell phone provider and insisted that she did not consent to purchase these services. The customer service representative suggested that someone must have inadvertently ordered the services online by inputting a cell phone number online. Although the provider was able to cancel the services, Violet was told that she would have to contact each individual company to ask for a refund.
- Jeanne S. of Brewster, Massachusetts noticed larger-than-normal bill, which prompted her to comb through her bill to look for an explanation. She found three different unauthorized charges for \$9.99 on her children’s phones. After a 45-minute online chat with customer service, her carrier agreed to remove the charges from her bill. The next month, she found a similar charge for \$9.99, which the carrier immediately eliminated. The experience prompted Jeanne to check her bill much more carefully each month, but as she put it, “it amazes me that [carriers] allow it to happen in the first place.”
- In late June of this year, Victoria F. of Albion, Indiana, was told by her wireless carrier that a third party had charged her account \$9.99 for the last nine months on a prepaid phone account that Victoria purchased solely for emergency purposes. Significantly, as Victoria told us, “I do not text, download data, or receive calls on this phone and I have never given the number as a contact number.” When Victoria discussed the matter with her carrier, the carrier refused to reimburse her, and explained that she would need contact the third party directly.

The above examples demonstrate just how easy it is to inadvertently purchase a service that is not wanted, and how existing protections put the responsibility on consumers to be the ones to identify and report suspicious charges on their telephone bills. Furthermore, they suggest that some consumers continue to face difficulty obtaining refunds for unauthorized charges, despite carriers’ assertions to the contrary.

IV. THE COMMISSION SHOULD TAKE ADDITIONAL ACTION TO PUBLICIZE CONSUMER COMPLAINT DATA IN THIS AND OTHER PROCEEDINGS

Since the Commission last refreshed its record, numerous federal and state agencies, as well as the FTC, have weighed in with evidence of cramming on wireless bills. Indeed, our own nation-wide survey published in the August 2012 issue of *Consumer Reports* looked at subscribers in twenty-three metro areas and found that consumers continue to experience such charges.⁶ However, we believe that the Commission should play a more active role in publishing its available complaint data in this and other proceedings.

As Commissioner Rosenworcel recently noted at the Commission's most recent monthly meeting, "the Commission receive[s] roughly 400,000 complaints and inquiries each year...but the data [it] collect[s] is only published in snapshot form."⁷ Currently, the FCC collects complaint data, but this data is made available to the public on a very limited and general basis in quarterly reports. These reports list only the top few consumer inquiries and informal complaints, with no information about the number of complaints, the particular companies involved, or the ultimate resolution of complaints. We believe that there are many steps that the Commission could take to make information about cramming more publicly available in a central, easy-to-use database. This additional information would not only help improve business accountability to consumers, but it would encourage further analysis by the general public to the benefit of consumers and policymakers alike. We urge the Commission to consider additional measures to improve data collection and publication practices in this and other contexts.

⁶ See *Beware of Bogus Phone-Bill Fees*, CONSUMER REPORTS, Aug. 2012, <http://www.consumerreports.org/cro/magazine/2012/08/beware-of-bogus-phone-bill-fees/index.htm> (last visited June 21, 2013).

⁷ See Statement of Commissioner Rosenworcel on Broadband Speeds, *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1114/DOC-324153A1.pdf.

V. CONCLUSION

The Commission took an important first step to prevent unauthorized third-party charges in the landline context, but much more needs to be done to protect wireless consumers. We appreciate the Commission's efforts to date and look forward to working on a solution that benefits all consumers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Delara Derakhshani', with a horizontal line at the end.

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