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

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

REPLY SUPPLEMENTAL COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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December 16, 2013

Table of Contents

Introduction

The comments filed November 18, 2013, may contain more rehash than refresh. Neither that possibility, however, nor anything else should obscure the central reality exhibited by the record in these dockets: the cramming problem has persisted for the better part of two decades, at a cost to American consumers in the billions of dollars. Often at the source of the difficulty are nefarious activities of fraudsters and scammers, coupled with defects in the claimed authentication processes used by the industry. While the difficulties have always morphed from one thing to another, they have never gone away.[1]

The National Association of State Utility Consumer Advocates (NASUCA) continues to urge what it believes is at once the most direct, the most effective and the least disruptive solution to the problem. The Federal Communications Commission (FCC or Commission) should propose and adopt a rule expressly prohibiting cramming.

[1] By way of summary, the record includes persuasive evidence of longstanding and persistent difficulties, including (i) millions of dollars of state-ordered restitution and penalties in the 1990s, (ii) multiple patterns of dishonest and illicit activity in the 2000s, including tens of millions of dollars of bogus billings for collect phone calls, numerous so-called "modem hijacking" cases in which consumers were billed hefty unauthorized charges for long distance calls after hackers invaded their computers, frequently doctored verification recordings, and often fabricated Internet signups, (iii) a 2010 federal court decision on petition of the Federal Trade Commission (FTC) exposing a "staggering amount of unauthorized charges," including tens of thousands of "fraudulently manufacture[d]" sales, in which 44 percent of the verification recordings were defective, almost all of the Internet signups were illegitimate, 97 percent of the charges were unauthorized, and 95 percent of the "customers" were not even aware that they had been billed; (v) four rulings in 2011 by the Federal Communications Commission (Commission) forcefully demonstrating that Internet signup processes were "clearly inadequate"; (vi) a hearing in 2011 before the Committee on Commerce, Science and Transportation of the United States Senate replete with references to "crooks," "scams," "frauds," "deceptions," "phantom billings," "bogus charges", and "con artist stuff," together with a staff report concluding that wireline cramming was a problem of "massive" proportions, including billings to deceased persons and to fax and data lines and lines dedicated to fire alarms, security systems, bank vaults, elevators and 911 systems, and that the third-party billing system employed by the major carriers was facilitating the scams; (vii) comments filed with the FTC in July of this year by the attorneys general of 37 states and three territories reporting a voluminous and increasing number of mobile cramming complaints, consistent across the industry, the country and time, typically involving unauthorized and unwanted text messaging services for things like horoscopes and celebrity gossip; and (viii) last month, a court petition filed by the Texas Attorney General against four mobile content providers and their billing aggregator with highly detailed allegations, complete with color webscreen captures, which, if true, starkly expose once again the defects in the authentication processes utilized by the industry.

The rule should extend across technologies and, to the extent of their respective abilities to exercise control, to content providers, billing aggregators and billing telephone companies alike. The rule should include a provision to the effect that a claimed authentication is not a defense to an alleged violation if the charges were in fact unauthorized, *i.e.*, if the claimed authentication did not in fact authenticate.

I. Industry solutions, notably cutbacks in third-party billing, have been implemented only after considerable public resources have been brought to bear on the problem. The experience over many years has consistently attested to the need for suitable laws and regulations, and for enforcement.

The industry, or segments of it, argues that voluntary industry efforts to address the problem, coupled with regulatory changes adopted last year, have adequately addressed the problem.[2] It claims that complaints are a small percentage of billings and that the number of complaints is declining.[3] It acknowledges the presence of "bad actors" and the importance of enforcement activity.[4]

NASUCA will not here repeat its many reasons for disputing the industry's continuing efforts to minimize the problem, except to note that Chairman Rockefeller was not persuaded.[5] Insofar as the rules changes last year are concerned, NASUCA

[2] CenturyLink, p. 2; 1-800 Collect, pp. 1-2, 4-5; Independent Telephone and Telecommunications Alliance, pp. 2, 8; Billing Concepts, pp. i, 8, 10.

[3] CenturyLink, p. 3; Billing Concepts, pp. i-ii, 1, 10-12, 16; CTIA, pp. 2, 5-7.

[4] Coalition for a Competitive Telecommunications Marketplace, pp. 7-8; Impact Telecom, Inc., and CompTel, p. 12; CTIA, pp. 9-10.

[5] S. Hrg. 112-171, "Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose," 112th Cong., 1st Sess., Committee on Commerce, Science and Transportation, United States Senate (July 13, 2011), pp. 117-18 ("There's just millions of sleepless hours for millions of Susan Eppleys . . . . What really is clear ought to be a monumental embarrassment just to the telephone companies that we've done. And we're going to persist on this because that's what we do here. We protect consumers. We've got a lot of other things, but we protect consumers . . . . I don't care [that this business of third-party billing represents less than one-tenth of 1 percent of all –] . . . . Don't you understand how

supported them for what they are: a modest effort to help consumers help themselves. As with any fraud or scam, however, the better part of the solution needs to come from the industry that is doing the exploiting, not the consumers who are being exploited.[6] Senator Ayotte immediately questioned whether the rules changes adopted last year would be adequate.[7] The Commission would not have initiated a further notice of proposed rule-making had it been persuaded it had already completed its work.

In terms of reducing the number of violations, the rules changes adopted last year have been far less significant than the actions of the major wireline carriers, and of the largest billing aggregator, in cutting back on third-party billing. As NASUCA observed in its supplemental comments a month ago, these actions, although subject to exceptions that allow substantial swaths of the cramming problem to continue, appear to have halted some of the schemes that were previously used to defraud consumers. Currently, three of the major wireless carriers are similarly cutting back on third-party billing, specifically of

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misleading that is? The point is, it doesn't [matter?] to Susan Eppley. It doesn't to hundreds, hundreds of thousands of other citizens all across the United States, every single year for years, and years, and years, and years. So don't give me, it represents one-half of one – that's the corporate point of view. So why do you use it? Why don't you think about her, rather than about one-half of 1 percent, which I don't necessarily agree with? . . . Don't embarrass the phone companies and all the others that we're going to be investigating, too. . . ").

[6] According to the *Inc21* court, "the burden should not be placed on defrauded customers to avoid charges that were never authorized to begin with." *Federal Trade Comm'n v. Inc21.com*, 745 F.Supp.2d 975, 1004 (N.D. Cal. 2010), *aff'd mem.*, No. 11-15330, 2012 WL 1065543 (9th Cir. 2012). Nor should such consumers have to endure "the hassle of obtaining reimbursements," including the "investments of time, trouble, aggravation and money," "especially" when offending companies are "uncooperative in providing remedies."   *Id*. at 1005. The evidence before the court was revealing. During execution of a search warrant, a document was found stating: "Never bill more than 29.95 per month. *The average small business sees this as phone charges and does not review for five months*." *Id.* at 986 (emphasis the court's). The defendants' systems administrator testified: "I told them that I was – I was very uncomfortable with the fact that almost none of our customers knew they were our customers. And I believe at one point, I described the business model as 'Gee, I hope we don't get caught.' And they thought that was funny. *They laughed*." *Id*. at 997 (emphasis the court's).

[7] S. Hrg. 112-171, note 5 above, p. 81 ("one of the issues I hope this committee will be addressing is whether those steps are sufficient to protect consumers and hold wrongdoers accountable").

premium text messaging services,[8] which can similarly be expected to produce beneficial effects. These actions, however, have been and are being taken only after considerable public resources have been brought to bear on the problem. The current actions of the wireless carriers came after discussions with forty-five states, led by Vermont, with Delaware, Florida, Maryland, Oregon, Texas and Washington.[9]

It is not enough to be asking whether some of the problems are abating. With the Senate Commerce Committee, FCC, FTC and the states all having devoted substantial resources to attacking the problem, it would be strange if some of the problems were not being reduced. Looking forward, however, it is not reasonable to expect that public authorities, including the Commission, will be able to continue to devote this level of intensive attention to the problem, apart from enforcement activity as needed. Nor should such attention be a constant necessity. What is needed are well-conceived laws and regulations that suitably address the problem.

At the Senate hearing, Chairman Rockefeller offered the following sobering commentary on the efficacy of voluntary industry efforts in the-not-too distant past:[10]

> The companies responsible for these cramming charges . . . don't really sell anything. Their sole purpose is to place bogus charges on your telephone bill and they're very, very good at that. They're very good at that and hope that you will pay your bill every month without looking at it too closely, which unfortunately, a lot of people do.
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> In the late 1990s, the Congress and the media devoted a lot of attention to this subject of cramming. I remember it well. Committees held hearings on cramming. Anti-cramming bills were introduced in both the House and the Senate. At the time, consumer advocates, and Federal

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[8] Press release, Vermont Attorney General, "AT&T Mobility, Sprint and T-Mobile Will Stop Billing Problematic Third-Party Charges" (Nov. 21, 2013), available at http://www.atg.state.vt.us/news/att-mobility-sprint-and-t-mobile-will-stop-billing-problematic-third-party-charges.php.

[9] *Id.*

[10] S. Hrg. 112-171, note 5 above, pp. 1-2.

> authorities, and the telecommunications industry all agreed that something needed to be done.
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> Well, the question was, what needed to be done? The industry told a pliant Congress, I guess, that they would fix the problem themselves, and that made sense. . . . Or as they said, . . . this industry has a powerful self-interest to correct its problem and we're working overtime to rid the industry of this scourge, which is kind of a strong statement. And the Congress, and the press, I guess everybody, kind of went along with it. Nobody paid much attention to it.
>
> So Congress took their word for it. We moved onto other important issues because we believed the cramming problem was being addressed, which of course, it was not. What we know now is that the cramming problem was not solved, far from it. The minute Congress decided to trust that the industry would fix this problem, the crammers saw that relaxation and they moved right back in. And American families and businesses have been paying the prices ever since then.

There is wisdom in the saying "fool me once, shame on you; fool me twice, shame on me." The Commission should not be fooled again.

II. Billings for telecommunications services have always been a prominent source of cramming complaints.

A majority of the comments in this "refresh" round, at least on the provider side, are from providers of wireline telecommunications services, particularly providers of pay-per-call usage, including dial-around long distance and collect calling, and of presubscribed long distance service. Many of the comments merely ratify what the Commission has already determined, and what no commenter appears to dispute, namely, that the offerings of these providers often serve legitimate and beneficial purposes.[11] The comments further argue, however, that their services do not give rise to cramming

[11] See Report and Order and Further Notice of Proposed Rulemaking (FNPRM), 27 F.C.C.R. 4436 (April 27, 2012) ¶¶ 41, 86, 90.

violations,[12] or, in the case of presubscribed long distance services, that the Commission's slamming rules are sufficient to address the cramming concerns.[13]

The record thoroughly refutes these attempted exculpatory contentions. Indeed, NASUCA's earlier filings have demonstrated, repeatedly, not only that billings for telecommunications services have frequently given rise to cramming violations, but also that some of the most notorious cramming schemes have involved precisely such billings.[14] To cite once again just a handful of examples: (i) the FTC obtained a $34.5 million judgment against Nationwide Connections and two related companies for charging consumers for collect calls that were neither made nor received;[15] (ii) the Commission proposed $11.7 million in penalties against Main Street Telephone, VoiceNet Telephone, Cheap2Dial Telephone, and Norristown Telephone for charging thousands of telephone users for dial-around long distance services they had not ordered;[16] and (iii) the California Public Utilities Commission brought proceedings

[12] 1 800 Collect, p. 5 ("[t]raditional telecommunications services such as collect calling . . . are not the source of cramming problems"); Coalition for a Competitive Telecommunications Marketplace, p. 2 ("the record contains no substantial evidence that Competitive 1+ Service providers are contributing to the cramming problem").

[13] Preferred Long Distance, p. 3 ("there is general acknowledgement that the Commission's carrier change verification rules . . . work well to prevent slamming"); Impact Telecom, Inc. and CompTel, p. 10 ("The FCC reasonably addressed similar issues in its slamming rules").

[14] NASUCA 10-13-09 Comments, pp. 49-52; NASUCA 10-24-11 Comments, p. 27 n. 90; NASUCA 12-5-11 Comments, pp. 22-24, 25-26; NASUCA 6-22-12 Comments, pp. 5-6, 21 n. 71; NASUCA 7-20-12 Comments, pp. 3-4, 7-8.

[15] See FNPRM, note 11 above, ¶ 24.

[16] See *id*., ¶ 23. Senator Klobuchar added: "[O]ur State's been taking this on , . . . with Attorney General Swanson. And last January, she and I joined together and talked about the filing of a consumer fraud lawsuit against a company that fraudulently charged thousands of Minnesotans for a service that they neither authorized nor used. The company, which was called Cheap to Dial, had charged 2,567 consumers in Minnesota for long-distance service fees. And do you know how many people actually used that service, Mr. Chairman? Nine people, nine people of the 2,567 that were charged." S. Hrg. 112-171, note 5 above, p. 82.

against Telseven L.L.C. alleging unauthorized directory assistance charges totaling over $21 million on the phone bills of approximately three million Californians.[17] In one Iowa case, collect calls from a sex hotline were supposedly received at the home of a 65-year old grandmother who lived alone; the company produced a voice recording allegedly showing the calls were accepted by a male who identified himself as "Marcus Welby."[18]

One commenter asserts it is impossible for consumers to use a pay-per-call service accidentally or unknowingly.[19] The record demonstrates, however, that it is entirely possible for consumers to be billed for the service **without using it**. The record shows that companies have commonly responded to complaints by insisting that charges for collect calls could only be incurred if consumers accepted the calls by, for example, pressing a "1" on a keypad, but that consumers have commonly stood by their positions, and been prepared to testify, that the calls that were billed were not in fact received or accepted. The number of such complaints, among other factors, has often lent credibility to what the consumers have said.[20] The difficulties remain relevant to wireline collect

[17] See *Order Instituting Investigation into the Operations of Telseven, LLC*, No. 1.10-12-010 (Cal. Pub. Util. Com'n Dec. 21, 2010).

[18] NASUCA 10-13-09 Comments, p. 49.

[19] Billing Concepts, p. 3 ("it is impossible for a consumer to accidentally or unknowingly use a dial-around long distance service," implying that it is impossible for a consumer to be charged for using such a service without having used it).

[20] NASUCA 10-13-09 Comments, pp. 49-50. Also, as illustrated by the FTC's *Verity* litigation, the fact that a connection is made from a consumer's telephone does not necessarily mean that charges were authorized: "[T]he ... defendants stoutly argue that every call for which they billed in fact was made from the line subscriber's line to the Madagascar numbers assigned to ACL and that Sprint's call records indisputably so establish. The record at this point is insufficient to determine whether this is so, but in large measure the argument is beside the point. The record is more than sufficient to establish, and the Court finds, *that a significant number of line subscribers to whom Verity sent bills did not themselves use, or authorize others to use, their lines to access the services of Verity's clients, even assuming that someone else used their lines to do so*." *FTC v. Verity International, Ltd*., 124 F.Supp.2d 193, 197 (S.D.N.Y 2000) (emphasis added). Later in the litigation, the court further concluded the allegedly indisputable records were in fact inaccurate. Calls allegedly connected to Madagascar as shown in the records were actually "short-stopped" in London. *Id*., 335 F. Supp. 2d 479, 484 (S.D.N.Y. 2004). Problems of a similar nature

calls. They become relevant to wireless collect calls as companies begin to develop plans for such calls.[21]

With respect to presubscribed long distance services, the cramming problem that is commonly seen does not involve the initial switch to the presubscribed carrier, which is subject to the slamming rules. The cramming problem that is commonly seen is the continued, unauthorized, billing by the presubscribed long distance carrier, at times for years, after the consumer has switched to *another* presubscribed long distance carrier.[22] This problem is not addressed by the slamming rules.

III. Wireless authentication processes, including "double opt-in," have not been effective.

CTIA, like the wireline providers, continues to state that a wide range of third-party billings serves legitimate and beneficial purposes.[23] Again, there is little if any dispute on the point. CTIA continues to rely, however, on the "double opt-in" and associated practices for purposes of authentication.[24] It acknowledges that practices are

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may persist in a morphed form today. See Press Release, U.S. District Attorney, District of New Jersey, "Owner of telecommunications companies admits role in international phone hacking conspiracy" (June 19, 2013), available at http://www.justice.gov/usao/nj/Press/files/Uelpenich,%20Wolfgang%20Plea%20News%20Release.html.

[21] See 1 800 Collect, p. 6.

[22] See NASUCA 07-20-12 Comments, p. 7 & n. 22; see also *In the Matter of Advantage Telecommunications Corp*., 28 FCCR 6843 (FCC 2013) ¶ 18 ("[w]e treat these complaints as . . . cramming violations because . . . after the affected consumers returned to their preferred carriers, [the company] continued to bill them without proper authorization") and 20 ("[r]egardless of whether a carrier at one time provides service to a customer, that carrier may violate Section 201(b) for cramming if it subsequently bills the consumer for unauthorized charges").

[23] CTIA, pp. 1-4.

[24] *Id*., p. 8.

evolving and states that the wireless industry is committed to protecting consumers and creating a trusted environment for wireless services.[25] NASUCA supports this goal.

As consumer interests uniformly demonstrate, however, the record discloses major deficiencies in the "double opt-in" and associated practices as presently constituted.[26] Particularly worthy of study is the meticulously prepared petition in *State of Texas v. Mobile Messenger U.S. Inc., et al.*, District Court of Travis County, Texas, filed November 6, 2013.[27] If the allegations of this petition are true, they reinforce the learning from the payment card industry that there are many points of vulnerability that a sound authentication system must address.[28] Among other particulars, the allegations of the petition, if true, support NASUCA's prior observation that a sound authentication process will not give a third-party vendor (who may be a fraudster) the ability to originate a PIN number but will rather assign that function to the billing company or to the consumer.[29]

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[25] *Id*., pp. 10-11.

[26] Vermont Attorney General, *et al*. (referencing May 2013 comments to FTC on behalf of 40 state and territorial attorneys general); Center for Media Justice, *et al*., pp. 9-10 (citing FTC's *Wise Media* case and Texas Attorney General's *JAWA* case); Consumers Union, pp. 4-5 (detailing continuing consumer complaints about defects of "double opt-in"); California Public Utility Commission and People of California, p. 25 ("Several recent cases involving CMRS carriers appear to indicate that the double opt-in process does not adequately protect consumers because bad actors may simply fabricate calling records or completely bypass the double opt-in requirement").

[27] A copy of the petition is linked to the press release at https://www.oag.state.tx.us/oagnews/release.php?id=4576. NASUCA's comments filed November 18, 2013, incorrectly indicated that the date of filing was November 6, 2012.

[28] See NASUCA 11-18-13 Comments, p. 6, n.15

[29] See NASUCA 5-22-12 Comments, pp. 14-16.

IV. Exempting VoIP providers from the solution would leave consumers without needed protection.

The Voice on the Net Coalition (VON) offers brief comments. It states there is no measurable increase in customer cramming complaints related to Voice over Internet Protocol (VoIP) services. It cites Commission compilations for first quarter 2013 showing 97 "wireline" cramming "inquiries" and 814 "complaints" about "billing and rates" for "bundled and VoIP services," observing with respect to the latter figure that it is difficult to tell which, if any, of the complaints were filed against VoIP providers and how many were actually cramming complaints. VON states that these numbers reflect the ongoing individual efforts of VoIP providers, "without any regulatory fiat," to bill only authorized services and that VoIP providers do not bill third-party charges.[30]

There is nothing in VON's comments that leads to a conclusion that consumers should be left unprotected from cramming violations by VoIP providers. As Senator Rockefeller persuasively conveyed, the fact that some or most consumers are not victimized is no consolation to those who are.[31] As NASUCA and others have repeatedly observed, most cramming victims do not notice the violations or (because the amounts are typically small) do not go to the trouble of complaining about them, so the numbers do not show up in the compilations. Nor is it true that there has been no regulatory fiat. As observed by another commenter, "[t]he act of cramming is already across-the-board unlawful."[32] As discussed above, there has been a spotlight, as well as significant

[30] Voice on the Net Coalition, pp. 2-3.

[31] See note 5 above.

[32] Coalition for Competitive Telecommunications Market, p. 8.

enforcement activity. VoIP providers may or may not use third-party billing in the future.

If VoIP providers are not placing unauthorized charges on consumer phone bills, that is to their credit, and they have nothing to fear from the proposal advanced by NASUCA. There is no sound policy reason, however, to exempt these providers from consumer protections that experience demonstrates to be necessary. The fact that the services are provided using a different technology is irrelevant. Technologies have always been changing, in this industry and in others. The operators of electric motor vehicles must obey the same traffic laws as the operators of gas-powered vehicles. No one suggests otherwise. Because VoIP providers are playing an increasingly significant role in telecommunications, exempting them from consumer protections adopted now would ensure that any fix is partial and temporary.

V. The debate over the suitability or unsuitability of an opt-in mechanism avoids the real question, which is the need for adequate authentication processes.

The Commission's request for comments regarding the need for an opt-in requirement and the mechanics of an opt-in process for wireline and/or wireless services[33] appears to have prompted most of the comments in this "refresh" round. For the reasons stated below, the inquiry would more appropriately focus on the adequacy of the processes used to authenticate the legitimacy of the charges.

The most studied analysis of the opt-in concept is perhaps that provided by the California Public Utilities Commission (CPUC) and the People of the State of California.

[33] Public Notice DA 13-1807 (Aug. 27, 2013).

They suggest the most effective way to protect consumers is to prohibit third-party charges altogether, unless a consumer affirmatively asks a carrier to permit such charges, a proposal referred to by CPUC as "default blocking opt-in."[34] As CPUC states, there are various mechanics that could be considered.[35]

Among the concerns addressed by CPUC is a concern that a default blocking opt-in requirement, if implemented on an all-or-nothing or blanket basis, might deprive consumers **who do not opt in** of an ability to use third-party billing when they want to use it, as, for example, for a charitable donation in the case of a natural disaster.[36] CPUC therefore suggests the Commission explore a "provisional" or "case-by-case" opt-in, perhaps using a PIN or dial around number.[37]

For the reasons cited by CPUC, an all-or-nothing or blanket opt-in requirement is not an optimal solution for consumers who do not opt in. Absent further protection, moreover, an all-or-nothing or blanket opt-in is also not an optimal solution for consumers who do opt in. Such consumers can find themselves still victimized by the unauthorized charges that these dockets have been seeking to end.[38]

The concept of a "case-by-case" opt-in focuses attention on the consumer's authorization of a particular charge and the means by which that authorization is authenticated. In NASUCA's view, that is the appropriate focus.

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[34] California Public Utilities Commission, *et al*., pp. 8, 11.

[35] *Id*., pp. 10-14.

[36] *Id*., p. 12.

[37] *Id*., pp. 13-14.

[38] See Valley Yellow Pages, p. 5 ("Under the blanket approach, customers would agree to accept any third party charge made to their bills. But this would not be an effective way to combat cramming because the mere fact that a customer has agreed to third party charges, generally, says nothing about whether a particular charge was authorized or not").

VI. The development of adequate authentication processes is a task more effectively performed by the industry than by government, but suitable laws and regulations, and enforcement, are needed in order to hold the industry accountable for such development.

The Commission could perhaps prescribe the means by which a consumer's order must be authenticated. But that is a path perhaps not easily or effectively traversed. The industry is complex and dynamic. Different types of services may call for different types of authentication processes, as the providers of pay-per-call usage point out.[39] The costs and benefits of various proposals may not be obvious. Authentication processes may need adjustment and adaptation over time, as new frauds and schemes pose challenges not previously foreseen. The regulatory process may not be particularly well suited to executing a task of this sort.

A more effective path may be to hold the industry accountable for the end result. First, the Commission should propose and adopt a rule expressly prohibiting cramming, including a provision to the effect that a claimed authentication is not a defense to an alleged violation if the charges were in fact unauthorized, *i.e.*, if the claimed authentication did not in fact authenticate. Second, the Commission should enforce the rule, and encourage enforcement activities by others.[40] The development of adequate authentication processes, including their adjustment and adaptation over time, would become the responsibility of the industry.

[39] See 1 800 Collect, p. 5 ("an 'opt-in' requirement is integral to the process already, i.e., customers opt-in to the service and billing features of collect calling on a one-off basis each time they place or accept a collect call").

[40] See Coalition for a Competitive Telecommunications Marketplace, p. 8 ("insufficient enforcement activity renders any law . . . ineffective in preventing unlawful activity").

Conclusion

As stated by Senator Ayotte, there is an "urgent need to find workable solutions that protect the public."[41] The action suggested here, coupled with ongoing enforcement activity at all levels, is such a workable solution. The Commission should propose and adopt a rule explicitly prohibiting cramming. For effectiveness, the rule should extend across technologies and, to the extent of their respective abilities to exercise control, to content providers, billing aggregators and billing telephone companies alike. The rule should include a provision to the effect that a claimed authentication is not a defense to an alleged violation if the charges were in fact unauthorized, *i.e.*, if the claimed authentication did not in fact authenticate.

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[41] S. Hrg. 112-171, note 5 above, p. 81.