

UNAUTHORIZED CHARGES ON TELEPHONE BILLS: WHY CRAMMERS WIN AND CONSUMERS LOSE

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 13, 2011

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ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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UNAUTHORIZED CHARGES ON TELEPHONE BILLS: WHY CRAMMERS WIN AND CONSUMERS LOSE

WEDNESDAY, JULY 13, 2011

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. Good morning. This hearing will come to order. Today's hearing is about a scam that has cost telephone customers billions of dollars. All of you at the witness table are aware of this in various ways and it's called unauthorized charges. The telephone company can have authorized charges if you want to buy DISH TV or something of that sort, that's an authorized charge.

But the great percentage of them are unauthorized charges, but, still, the telephone companies still let them appear on the bill. So what happens is, they make—they appear on the bill and the person who doesn't necessarily carefully read the bill, which is often four or five pages long, sees this thing, and doesn't know what it is, but they didn't ask for it. They didn't want it. It's not authorized to be there. Legally, it shouldn't be there, but it is there and it's called cramming and it refers to what we call mysterious charges that appear on American phone bills for services that people don't want, and don't use, didn't ask for, and shouldn't have to pay for.

The companies responsible for these cramming charges don't sell legitimate projects, that is, the unauthorized ones. They don't really sell anything. Most of them don't seem to do that. 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.

In the late 1900s, 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 authorities, and the telecommunications industry all agreed that something needed to be done.

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. But they didn't want to have any—they didn't want—they wanted to have voluntary guidelines, yes, but they didn't want to have any sort of mandates. Or as they said, this is—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.

So in this committee, we held a year-long investigation on this, hundreds of thousands of pages, hundreds of witnesses, consumers, businesses, small businesses, all kinds of folks. And we now have a very good idea of just how high this price has been.

Here's what we've learned. More than a decade after telephone companies implemented their voluntary guidelines, hundreds of—cramming companies—we don't even know how many—continue to place tens of millions of bogus charges on families and businesses on their landlines. That's an important distinction, not on their cell phones, but on their landlines.

And they do that every year. While the individual charges are usually small amounts, between \$10 to \$30, when you add that up, it becomes an enormous amount. It's billions and billions of dollars.

Now, there's also a cost of cramming that's harder to put a figure on and that is the agony that people have to go through, trying to figure out, hey, I didn't order this. If they do look at their bill, how do I get rid of it? Oh, I got a call. They call their cramming company, and nobody answers the phone, or maybe somebody does, and refers them to the telephone company. And they just get lost, and give up, and get mad, and feel even less friendly about their—about their Congress. So it's a problem.

One of the questions we have asked during this investigation is, what have the telephone companies been doing for the past decade to protect their customers from these abusive tactics? I was with a major telephone CEO last night and we sort of talked about that. There wasn't a great deal said. Anyway, the short answer is not enough. Well, all telephone companies have anti-cramming policies. They haven't made a serious effort to keep the crammers off their landline phone bills.

Even when the phone companies kick a company off the bills, the crammers come right back in. They wait a week or so and then they come right—they flood right back in. There are many iterations of their obnoxious behavior.

Now, one reason, however, the telephone companies don't really crack down on crammers is, they make money from cramming. Oh, yes, they make money. Now, do they make a whole lot of money?

No, but in America, money is money and if you can make money, why not? According to the financial information that the Committee staff has reviewed, telephone companies earn a dollar or two every single time they place a third-party—an unauthorized third-party charge on their customer's bill.

So do the math. That's well over a billion dollars in profit. Today, my staff released a report detailing how cramming works and how much money it is costing, and not just, you know, American families and businesses, small businesses in particular, people in particular.

So I ask unanimous consent to enter this report and other related documents into today's record. Hearing no objection—

Senator AYOTTE. No, no objection, Mr. Chairman.

The CHAIRMAN. It will happen, thank you.

[The information referred to follows:]

U.S. Senate Committee on Commerce, Science, and Transportation

Office of Oversight and Investigations—Majority Staff

Unauthorized Charges on Telephone Bills

STAFF REPORT FOR CHAIRMAN ROCKEFELLER

JULY 12, 2011

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Executive Summary

In May 2010, Chairman Rockefeller launched an investigation into third-party billing on landline telephone bills. He opened the investigation because consumers had complained for years that they were finding mysterious charges on their telephone bills for services they had not purchased. To understand the scope and the severity of this problem, commonly referred to as "cramming," the Senate Commerce Committee staff has conducted a wide-ranging investigation over the past year.

The evidence obtained through this investigation suggests that third-party billing is causing extensive financial harm to all types of landline telephone customers, from residences and small businesses, to government agencies and large companies. Over the past decade, telephone customers appear to have been scammed out of billions of dollars through third-party billing on landline telephones. Unauthorized third-party charges are a nationwide problem.

Third-Party Billing and The Rise of Cramming

Cramming is not a new problem. It began appearing in the 1990s, when telephone companies opened their billing platforms to an array of third-party vendors offering a variety of services. For the first time, telephone numbers became a payment method equivalent to credit card numbers. Consumers and businesses could purchase products or services with their telephone numbers and the charges for the services would later appear on their telephone bills.

While the telephone companies' decision to open their billing platforms had the potential to benefit consumers and businesses, cramming quickly emerged as an unintended consequence. The rise of cramming was so significant in the late 1990s that federal authorities, consumer advocates, and telephone companies all agreed that changes to the telephone companies' third-party billing systems were needed.

At the time, both the Federal Communications Commission (FCC) and the telecommunications industry advocated for a voluntary approach, rather than rule-making or congressional action. The United States Telephone Association told Congress that the industry "needed flexibility to deal with cramming on a case specific basis" and that "mandatory guidelines or a one-size-fits-all approach would erode that ability." Although mandatory requirements for telephone companies were discussed, the problem was addressed almost exclusively through voluntary guidelines. The only mandatory requirements placed on telephone companies at the Federal level have been the FCC's "Truth-in-Billing" regulations, which require disclosure of third-party charges on telephone bills.

Over a decade later, thousands of consumers still regularly complain to the Federal Trade Commission (FTC) 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.

The Senate Commerce Committee's Investigation

To understand the scope of the cramming problem, the Committee requested information related to third-party billing and cramming from telephone companies; state and federal regulatory agencies; companies that offer third-party billing as a method of payment; consumers, businesses, and government agencies that have been affected by cramming; and companies that specialize in auditing telephone bills.

The evidence obtained and analyzed by Committee staff suggests that third-party billing on landline telephones has largely failed to become a reliable method of payment that consumers and businesses use to conduct legitimate commerce. Rather, it created cramming, a problem of massive proportions likely affecting millions of telephone users and costing them billions of dollars in unauthorized third-party charges over the past decade. With the exception of legitimate third-party vendors that offer services like satellite television and long distance, third-party billing appears to be primarily used by con artists and unscrupulous companies to scam telephone customers.

The key findings of the Committee staff's investigation are the following:

Third-party billing is a billion dollar industry. Telephone companies place approximately 300 million third-party charges on their customers' bills each year, which amount to more than \$2 billion worth of third-party charges on telephone bills every year. Over the past 5 years, telephone companies have placed more than \$10 billion worth of third-party charges on their customers' landline telephone bills.

A substantial percentage of third-party charges are unauthorized. While Committee staff cannot determine precisely how many third-party charges are unauthorized, the evidence obtained through the investigation suggests it is a large percentage.

- Telephone customers with third-party charges on their telephone bills overwhelmingly reported that the charges were unauthorized. Committee staff has spoken with more than 500 individuals and business owners whose telephone bills included third-party charges. Not one person said the charges were authorized. Law enforcement agencies have reported similar findings when conducting surveys for their own cramming investigations.
- Committee staff is aware of hundreds of third-party vendors whose actions suggest they are engaged in cramming. For example, a company specializing in auditing telephone bills reported that over 800 different third-party vendors had placed unauthorized third-party charges on its clients' landline telephone bills.
- Committee staff has found hundreds of egregious examples of cramming. Third-party vendors have enrolled deceased persons in their so-called "services" and charged family members' telephone bills for it. They have charged telephone lines dedicated to fire alarms, security systems, bank vaults, elevators, and 911 systems. Senior citizens' telephones have been enrolled in webhosting services, even though they have never used the Internet. A children's hospital was charged for a "celebrity tracker" e-mail service that provided "daily celebrity news feeds, photos, and videos." A national bank's telephone lines were charged for "credit protection plans." Third-party vendors even crammed unauthorized charges for voice-mail services onto AT&T's own telephone lines.

Telephone companies profit from cramming. Over the past decade, telephone companies have generated over \$1 billion dollars in revenue by placing third-party charges on their customers' telephone bills. Since 2006, AT&T, Qwest, and Verizon have earned more than \$650 million through third-party billing. Verizon explained that it "receives a flat fee between \$1 and \$2 per charge for placing third-party charges" on its customers' bills. Because telephone companies generate revenue by placing third-party charges on their customers' bills, telephone companies profit from cramming. Documents reviewed by the Committee staff show that some telephone company employees feel financial pressure to approve third-party vendors even though the companies appear to be crammers.

Cramming affects every segment of the landline telephone customer base. Unauthorized third-party charges harm residences, small businesses, nonprofits, corporations, government agencies, and educational institutions. The Committee has accumulated thousands of examples of cramming on nonresidential telephone bills.

Examples of cramming on small business telephone lines. A small business that owns Popeyes and Krispy Kreme franchises reported that third-party vendors placed more than \$4,000 worth of charges on its telephone bills for electronic facsimile and other services it did not authorize or use. A small business owner in Nevada reported that seventeen different third-party vendors charged him over \$4,000 for online business listings, voice-mail, identity theft protection, and streaming video services he did not authorize or use. A bicycle store owner in Illinois reported approximately \$1,500 of unauthorized charges for "virtual fax and voice-mail" services she did not authorize or use.

Examples of cramming on corporate telephone lines. Large organizations are particularly susceptible to cramming because they often have thousands of telephone lines in hundreds of locations. Crammers appear to target them specifically. A national food chain reported over \$100,000 worth of unauthorized third-party charges on a yearly basis. Other companies provided similar figures. A national retail chain reported \$550,000 in unauthorized third-party charges on its telephone bills over the past decade. The retail chain estimates it has spent \$400,000 in resources battling unauthorized third-party charges.

Examples of cramming on government telephone lines. Local, state, and Federal agencies also reported cramming on their landline telephone bills. The United States Postal Service would have paid almost \$550,000 in unauthorized third-party charges if it had not hired an auditor to examine its bills. The United States Naval Station in San Diego, California, reported its telephone bills in-

cluded \$11,000 worth of unauthorized third-party charges in one quarter in 2009. Since November 2009, Los Angeles County has received \$306,000 in billing credits for unauthorized third-party charges on its AT&T landline telephone bills. Los Angeles, Chicago, New York, and other large city governments also battled cramming charges.

Many third-party vendors are illegitimate and created solely to exploit third-party billing. Committee staff has found third-party vendors operating out of post office boxes, fake offices, and residences, with “presidents” that know nothing about their “companies.” One woman admitted that she became involved because “a friend said do you want to become president of a company.” Another “president” admitted that he did nothing more than sign his name to papers that were submitted to telephone companies.

Many telephone customers experiencing cramming did not receive help from their telephone companies. Although telephone companies said they instructed their representatives to assist customers with cramming problems, consumers and businesses frequently reported that the telephone companies were not helpful. Company representatives frequently stated incorrectly that telephone companies were “legally obligated to place the charges on their bills,” and that, “there was nothing they could do to help them.” Only after these consumers contacted the Better Business Bureau or their state attorneys general did their telephone companies provide assistance for many of them. Business and government offices had similar experiences. For example, an AT&T Senior Account Manager for the City of Tyler, Texas, stated, “Neither myself or my team can do anything to resolve these for you and this isn’t the first time we’ve been asked.” He added, “My former account Dallas County would have 20–30 per month . . . I wish, I really wish there was some way we could help but there is not.”

The telephone companies are aware that cramming is a major problem on their third-party billing systems. While telephone companies regularly tell their regulators and the media that their cramming complaint rates are low, internal documents reviewed by Committee staff show that the companies understand cramming is a major customer service problem. The companies have received hundreds of thousands of complaints in which consumers used words like “fraud,” “scam,” “theft,” “hoodwinked,” “shocked,” “disgusted,” “upset,” “stealing,” “bad business,” “taking advantage,” “disappointed,” and “unethical” to describe their experiences with third-party billing. Furthermore, telephone companies deal with only a small fraction of the actual number of their dissatisfied, angry customers, because most customers either never realize they are being charged or they complain directly to third-party vendors. Over an eight month period in 2010, for example, more than 200,000 people directly called a set of related third-party vendors to cancel their services because they “did not understand,” “did not remember,” or “did not authorize” the charges. Over the same period, those third-party vendors received approximately 2,750 cramming complaints forwarded from telephone companies.

I. Background

For over a decade, telephone users have complained that their landline telephone bills include unauthorized third-party charges. This problem, commonly referred to as “cramming,” first appeared in the 1990s, after the telephone companies opened their billing platforms to an array of third-party vendors offering a variety of services. In recent years, the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and state attorneys general have brought multiple enforcement actions against individuals and companies for engaging in cramming. These cases showed that telephone users continue to be scammed out of millions of dollars.

The Commerce Committee opened this investigation to determine how pervasive cramming is on the telephone companies’ “billing and collection” systems and to understand why telephone users regularly face these unauthorized third-party charges. Over the past year, Committee staff has obtained information from dozens of companies involved in third-party billing and interviewed hundreds of consumers and businesses that have been harmed by cramming. This report summarizes the findings of the staff’s investigation. It examines the development of third-party billing on landline telephone bills, the process of placing unauthorized charges on phone bills, the financial costs of cramming on American consumers and businesses, and the role telephone companies play in third-party billing and cramming.

A. Development of the Third-Party Billing System on Landline Telephone Bills

The development of third-party billing on landline telephone bills can be traced to two regulatory actions in the 1980s: the divestiture of AT&T in 1984, and the FCC’s subsequent decision to detariff telephone billing and collection in 1986. Following the break-up of AT&T, “regional bell operating companies,” also referred to

as “local exchange carriers,”¹ provided local telephone services, but were not permitted to offer their own long distance services. Long distance was still supplied by AT&T, which no longer had its own billing and collection system due to divestiture. Consequently, the local telephone companies provided billing and collection for AT&T’s long distance service. To promote competition and fairness, they were also required to provide billing and collection services on a nondiscriminatory basis for other companies that offered long distance services.²

With the FCC’s decision to detariff billing and collection in 1986, telephone companies gained flexibility over how they used their billing and collection systems. Over time, they opened their billing and collection systems to additional third-party companies offering a variety of services, some of which were completely unrelated to telephone service. This decision led to third-party billing on landline telephone bills as it exists today. For the first time, telephone numbers worked much like credit card numbers. Consumers could purchase services with their telephone numbers, and the charges for the services would later appear on their telephone bills.

Although there has been confusion over whether telephone companies must allow third-party vendors to place charges on their customers’ telephone bills, the companies’ decision to open their billing platforms to an array of outside vendors was largely a business decision rather than a federal regulatory requirement. The FCC explained to Congress in 1998:

[T]he Commission does not require the local exchange companies to provide billing and collection services for any entity requesting such service. The carriers have wide latitude to decide for whom they will provide such service, the terms under which they will provide service, and the grounds under which they will discontinue providing service to customers who refuse to play by the rules.³

Any federal obligation the former Bell operating companies may have had to provide third parties access to their billing systems was extinguished in 2007, when the FCC relieved them of the nondiscrimination obligations imposed by Section 272 of the 1996 Telecommunications Act.⁴ Presently, with the exception of a few state requirements, telephone companies are free to allow, or not allow, whatever companies they choose to place third-party charges on their customers’ telephone bills.

B. Emergence of the Cramming Problem in the 1990s

In the 1990s, state and federal authorities, including both the FTC and FCC, saw a major spike in consumer complaints about unauthorized third-party charges on telephone bills. At the time, experts linked this outbreak of fraud to the telephone companies’ inexperience in managing third-party billing payment systems. The FTC stated that, “con artists have found the telephone billing and collection system to be a fertile area to defraud consumers” because it has “yet to develop the kind of effective mechanisms for risk assessment and fraud prevention that characterize other billing and collection systems.”⁵

Experts also attributed cramming to the ease with which a con artist could obtain consumers’ and businesses’ telephone numbers. They noted that the telephone companies’ decision to make their customers’ telephone numbers akin to credit card numbers created the ideal conditions for fraudulent conduct. Unlike credit card numbers, telephone numbers were widely available to anyone with a telephone directory. The FCC explained:

[I]t is significantly *easier* to bill fraudulent charges on telephone bills than on credit card bills. While credit card charges require access to a customer account number that consumers understand should be treated confidentially, all that is often required to get a charge billed on a local telephone bill is the consumer’s telephone number. This number is not only expected to be widely distributed,

¹This report uses the term “telephone companies” to describe the various types of local exchange carriers that bill their customers for landline telephone service.

²Federal Communications Commission, *Detariffing of Billing and Collection Services, Report and Order*, 102 F.C.C.2d 1150 (Jan. 29, 1986).

³Permanent Subcommittee on Investigations for the Senate Committee on Governmental Affairs, Hearing on “Cramming:” *An Emerging Telephone Billing Fraud*, 105th Cong. (July 23, 1998) (S. Hrg. 105–646).

⁴Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements*, CC Docket No. 00–175, Report and Order and Memorandum Opinion and Order, 22 FCC Red. 16440 (2007) (*Section 272 Sunset Order*).

⁵Federal Trade Commission Report, *Fighting Against Fraud: The Case Against Cramming* (June 1999) (online at <http://www.ftc.gov/reports/Fraud/3rd/fightingconsumerfraud.shtm>).

but can easily be “captured” by an entity even when the consumer has not authorized charges or made a purchase.⁶

If so inclined, a con artist needed only a few minutes to obtain thousands of consumers’ and businesses’ telephone numbers. In 1999, when analyzing cramming, the General Accounting Office (GAO) explained that “[s]ome vendors apparently have simply lifted names and numbers from telephone directories to charge businesses for nonexistent services.”⁷ The rampant levels of fraud and the ease in which it was accomplished led the FCC to rank cramming “as one of the most serious consumer problems in the industry.”⁸

C. Prior Efforts to Combat Cramming

The rise of unauthorized third-party charges in the 1990s was so significant that federal authorities, consumer advocates, and the telephone companies all agreed that changes to the telephone companies’ third-party billing systems were needed. At the time, both the FCC and the telephone companies advocated correcting the problem through voluntary guidelines, rather than through FCC rulemaking or congressional action.

In April 1998, the FCC invited the largest telephone companies, along with representatives of the relevant telecommunications industry associations, to participate in a workshop to develop a set of voluntary guidelines to combat cramming.⁹ By July 1998, the telephone companies and the industry had agreed upon a set of non-binding guidelines to combat the cramming problem.¹⁰ During subsequent congressional hearings about cramming, the telephone industry used the new voluntary guidelines to argue that congressional action on cramming and third-party billing was not needed.¹¹ At a Senate hearing in July 1998, the President of the United States Telephone Association stated:

The LEC [local exchange carrier] industry should be given the opportunity and the needed time to implement the guidelines that have been developed. I have a high degree of confidence that these voluntary guidelines will produce an effective means to curb this abuse. This industry has a powerful self-interest to correct this problem, and, as I mentioned before, we are working overtime to rid the industry of this scourge.¹²

A number of bills were introduced in Congress that addressed cramming by placing requirements on telephone companies, but none were adopted.

This voluntary response to the cramming problem marked a different approach than the one Congress took when it faced similar problems with the credit card payment system in the 1960s and 1970s. In 1974, Congress passed the Fair Credit Billing Act to protect consumers from the fraudulent conduct that credit cards were enabling.¹³ The law limited consumers’ liability for unauthorized charges, imposed responsibilities on the credit card companies to ensure that the charges placed on consumers’ bills were authorized, and gave consumers the right to dispute charges on their credit card bills.¹⁴

Because federal authorities supported a voluntary approach to the cramming problem, telephone consumers do not have the legal protections that credit card consumers enjoy through the Fair Credit Billing Act. Consumers who dispute charges on their credit card bills have more options and more rights than consumers who dispute charges on their telephone bills.

The only mandatory Federal cramming protections that have been provided to consumers are related to telephone bill disclosure. In 1999, the FCC adopted “Truth-in-Billing” regulations, which required telephone bills to contain “full and non-mis-

⁶Federal Communications Commission, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order, 14 FCC Rcd. 7492 (May 11, 1999) (italics in original).

⁷General Accounting Office, *Overview of the Cramming Problem* (GAO/T-RCED-00-28) (Oct. 25, 1999).

⁸1998 Senate Cramming Hearing, *supra*, note 3.

⁹Federal Communications Commission, *Anti-Cramming Best Practices Guidelines* (available at www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html) (accessed July 7, 2011).

¹⁰*Id.*

¹¹See 1998 Senate Cramming Hearing, *supra*, note 3; Subcommittee on Telecommunications, Trade, and Consumer Protection for the House Committee on Commerce, *Hearing on Protecting Consumers Against Cramming and Spamming*, 105th Cong. (Sep. 23, 1998).

¹²1998 Senate Cramming Hearing, *supra*, note 3.

¹³Fair Credit Billing Act, Pub. L. No. 93-495 (1974), 15 U.S.C. § 1601 (1976).

¹⁴*Id.*

leading descriptions” of third-party products and services and a clear indication of the third-party company responsible for each charge.¹⁵

D. Cramming in the 2000s

Although the major telephone companies incorporated many of the voluntary guidelines into their third-party billing processes, cramming has continued to be a significant problem for landline telephone users up to the present. In June 2011, the FCC estimated that 15 to 20 million households are affected by cramming on a yearly basis.¹⁶ Over the past decade, state and Federal law enforcement agencies have brought dozens of enforcement actions against crammers. These law enforcement actions include the following:

- In 2006, the Attorney General of Florida filed a lawsuit against E-mail Discount Network for charging almost 20,000 Florida consumers’ telephone bills for e-mail accounts and coupons they did not request or use.¹⁷
- In 2007, 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.¹⁸
- In 2009, the Attorney General of Illinois filed a lawsuit against U.S. Credit Find for placing “unauthorized charges on more than 9,000 Illinois consumers’ phone bills” for a purported online tutorial that would “help consumers fix their credit.”¹⁹
- In 2010, a federal district court awarded the FTC a \$38 million judgment against Inc21.com Corporation and related third-party vendors after learning that as few as 0.3 percent of the defendants’ customer base expressly authorized the defendants’ charges on their telephone bills.²⁰
- In 2011, the FCC 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.²¹

The frequency of serious anti-cramming law enforcement actions over the past decade suggests that the voluntary guidelines the telephone industry and the FCC developed in the late 1990s have not put an end to cramming. The Federal district court judge who issued the opinion in the FTC’s recent *Inc21* case made the following observation:

Since its institution, LEC billing has attracted fraudsters . . . In response to escalating consumer complaints regarding the placement of unauthorized charges on their phone bills—a practice known as “cramming”—the FCC responded in the late 1990s by adopting principles and guidelines to help consumers understand their phone bills and to deter this fraudulent practice. Of course, the approach taken by the FCC was (and remains today) premised on the dubious assumption that consumers scrutinize their phone bills every month before paying them, and local phone companies are vigilant about allowing only authorized third-party charges to appear on their bills.²²

E. Cramming on Wireless Telephone Bills

Although the Committee’s investigation has focused on cramming on landline telephone bills, cramming on wireless telephone bills appears to be a problem as well. Multiple lawsuits in recent years have shown that unauthorized third-party charges are appearing on wireless bills. For example, from 2008 to 2010, the Attorney Gen-

¹⁵ Federal Communications Commission, *Truth-in-Billing and Billing Format*, CC Docket No. 98–170, First Report and Order, 14 FCC Rcd. 7492 (May 11, 1999).

¹⁶ Federal Communications Commission, *Cramming Infographic* (June 22, 2011).

¹⁷ Settlement Agreement, *State of Florida, Office of the Attorney General v. E-mail Discount Network*, Fla. 2d Cir. Ct. (No. 2006 CA 2475) (Feb. 15, 2007).

¹⁸ Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress as to Defendant Willoughby Farr, *Federal Trade Commission v. Nationwide Connections, Inc.*, S.D. Fla. (No. 06–80180) (Feb. 19, 2008).

¹⁹ The Office of the Illinois Attorney General, *Madigan Reaches Agreement with U.S. Credit Find to Prevent Phone Cramming* (June 18, 2009).

²⁰ *Federal Trade Commission v. Inc21.com Corp.*, 745 F.Supp.2d 975, 992, 1013 (N.D. Cal. 2010).

²¹ Federal Communications Commission, *FCC To Crammers: No More “Mystery Fees: \$11.7 Million in Penalties Proposed for Unauthorized Charges on Consumers’ Monthly Phone Bills* (June 16, 2011).

²² Memorandum Opinion and Findings in Support of Preliminary Injunction, *Federal Trade Commission v. Inc21.com Corporation, et al.*, N.D. Cal. (No. C10–00022 WHA) (Feb. 19, 2010).

eral of Florida reached settlements with AT&T Mobility, Sprint, T-Mobile, and Verizon Wireless related to unauthorized third-party charges on wireless telephone bills. The companies agreed to issue refunds to their customers and to adopt various disclosure standards for the third-party vendors with which they do business.²³ Earlier this year, the Attorney General of Texas and Verizon Wireless filed separate lawsuits against a group of defendants accused of running a large-scale text-messaging operation that billed millions of dollars of unauthorized third-party charges to consumers' wireless bills.²⁴

Consumers also have reported cramming on wireless telephone bills to the press and consumer groups. Last year, Consumer Reports noted that the "growing use of cell phones as a payment device, for activities such as charitable contributions and mobile banking, creates fertile ground for crammers."²⁵ A Better Business Bureau official recently warned, "You might think that nothing bad can happen from giving out your cell phone number, but you should guard your phone number like you would a credit card or social security number."²⁶

II. The Committee's Investigation

On June 16, 2010, Chairman Rockefeller opened the Committee's investigation into cramming by sending letters to the then three largest telephone companies that offered landline telephone service: AT&T, Qwest, and Verizon.²⁷ The letters requested information and documents related to customer complaints about cramming, the companies' awareness of the cramming problem, the procedures they put in place to combat cramming, and a list of all third-party vendors they have allowed to place charges on their customers' telephone bills.

In July 2010, Chairman Rockefeller sent letters to the FTC and the FCC to request copies of the complaints each agency had received over the past year that were related to unauthorized third-party charges on consumers' landline telephone bills.

On December 17, 2010, Chairman Rockefeller sent letters to three additional companies: daData, Inc., My Service and Support, and MORE International.²⁸ These three companies appeared to be related to a large number of third-party vendors that were placing charges on telephone bills, many of which had been the subject of repeated consumer complaints about unauthorized charges. The letters asked the companies to provide information and documents explaining their relationships with the third-party vendors, their role in placing charges on consumers' telephone bills, their methods of acquiring customers, and complaints related to cramming.

On March 31, 2011, Chairman Rockefeller sent letters to five additional telephone companies offering landline telephone service: CenturyLink, Windstream, Frontier Communications, FairPoint Communications, and Cincinnati Bell.²⁹ The letters requested information related to the policies and procedures they had in place to combat cramming and the numbers and dollar values of third-party charges billed to their customers.

On May 19, 2011, Chairman Rockefeller sent letters to eight companies that specialize in auditing telephone bills: Advantage IQ, Advocate Networks, Cass Information Systems, ProfitLine, SpectraCorp Technologies Group, Symphony Services, Tango, and Xigo. During the investigation, Committee staff observed that many businesses, nonprofit organizations, municipalities, and government agencies hired these companies to dispute unauthorized charges on their behalf. The Committee requested information from these auditors to better understand how cramming impacts large business and government entities.

In the course of the investigation, Committee staff has reviewed over 3 million pages of documents. These documents include third-party vendor applications submitted to the telephone companies, telephone company manuals and procedures for handling cramming, correspondence between telephone companies and billing aggregators, correspondence between billing aggregators and third-party vendors, and telephone companies' and third-party vendors' internal e-mails and communica-

²³ State of Florida, Office of the Attorney General, *McCollum Reaches Settlement with Sprint Over "Free" Ringtones* (Oct. 8, 2008).

²⁴ State of Texas, Office of the Attorney General, *Texas Attorney General Seeks Halt to Fraudulent Text Messaging Scheme* (March 10, 2011); Complaint, *Cellco Partnership dba Verizon Wireless v. Jason Hope et al.*, D. Ariz. (No. 2:11-cv-00432-SRB) (Mar. 7, 2011).

²⁵ *Beat the New 'Cramming' Scams*, Consumer Reports (Aug. 2010).

²⁶ BBB: *Fight Back Against Phone Bill "Cramming."* Better Business Bureau (Nov. 1, 2010).

²⁷ Senate Committee on Commerce, Science, and Transportation, *Chairman Rockefeller Announces Investigation into Telephone "Mystery Charges"* (Dec. 17, 2010).

²⁸ *Id.*

²⁹ Senate Committee on Commerce, Science, and Transportation, *Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands* (Mar. 31, 2011).

tions about cramming. In addition, Committee staff reviewed tens of thousands of pages of documents related to cramming complaints from consumers, businesses, and government agencies.

Committee staff also interviewed dozens of individuals with knowledge of cramming. Committee staff spoke with a wide range of telephone users who have been victimized by cramming, from employees of large national companies and government agencies, to individual households. Committee staff also interviewed: auditors hired by companies and government agencies to remove unauthorized third-party charges from their landline telephone bills; “presidents” of third-party vendors; and employees both of telephone companies that offer third-party billing and those from companies that have chosen not to offer it. Finally, Committee staff spoke to officials from both state and Federal agencies, including state attorney general offices and state utility commissions, to learn their views on cramming.

III. Overview of Third-Party Billing on Landline Telephones

There are two types of third-party billing on landline telephones: (1) third-party billing where a vendor, such as a satellite television network or a large long distance provider, contracts directly with a telephone company to place charges on its customers’ bills; and (2) third-party billing where the telephone company contracts with a “billing aggregator,” or “clearinghouse,” which maintains business relationships with hundreds of other smaller third-party vendors.

The Committee’s investigation has focused on the latter arrangement because most third-party charges come through aggregators, and because consumer cramming complaints reviewed by Committee staff overwhelmingly relate to third-party charges placed through aggregators. As will be discussed in the section on “Illegitimate Third-Party Vendors,” many third-party vendors that bill through aggregators appear to be created solely to exploit the weaknesses of the landline telephone third-party billing system.

A. The Third-Party Billing Ecosystem

When the Committee opened the investigation, Committee staff’s understanding was that three types of companies play a role in third-party billing: third-party vendors, billing aggregators, and telephone companies.

Third-Party Vendors: Hundreds of different third-party vendors charge their customers for services through telephone bills. These companies claim to offer an array of services, including long distance, voice-mail, online backup, online photo storage, roadside assistance, and electronic facsimile. To gain access to the telephone companies’ third-party billing systems, they enter into contracts with billing aggregators. They also register directly with telephone companies and receive a carrier identification code (“sub-CIC”) number.

Billing Aggregators: The FTC has explained that billing aggregators open “the gate to the telephone billing and collection system” and “act as intermediaries between the [third-party] vendors and the local phone companies” by “contracting with the local phone companies . . . to have the local telephone companies collect . . . charges from consumers.”³⁰ Once the charges are collected by the phone companies, the billing aggregators, after taking their fee, pass the revenues back to their client vendors. A handful of aggregators manage third-party vendors’ access to landline telephone bills. Aggregator names that appear commonly on phone bills are: ESBI, ILD Teleservices, OAN, Payment One, the Billing Resource, Transaction Clearing, and USBI.

Telephone Companies: Telephone companies control access to their customers’ telephone bills and distribute the revenue generated from third-party charges. To place charges on telephone bills, a third-party vendor must first acquire a sub-CIC number and approval from a telephone company. Once a third-party vendor’s charges appear on telephone customers’ bills, the telephone companies, after collecting their fees, pass the revenue back to the billing aggregators, which then distribute the revenue to the third-party vendors. Committee staff has found that many telephone companies—from large national carriers like AT&T and Verizon to small independent carriers—place third-party charges on their customers’ bills.³¹

³⁰Federal Trade Commission, *Telephone “Crammers” Settle FTC Charges: Billing Aggregators Debited Phone Bills for Charges Consumers Didn’t Authorize* (Aug. 6, 2001).

³¹A number of smaller telephone companies do not allow third-party charges on their customers’ bills. For example, the Shenandoah Telephone Company (Shentel) recently wrote Chairman Rockefeller that it eliminated third-party billing in 2007 after receiving cramming com-

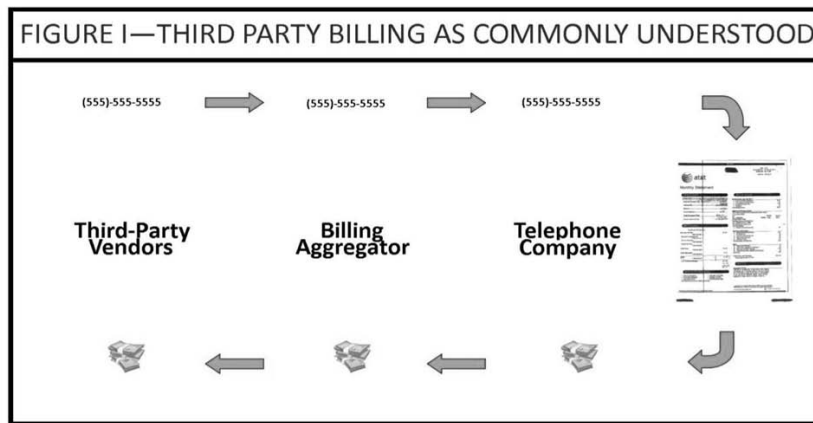
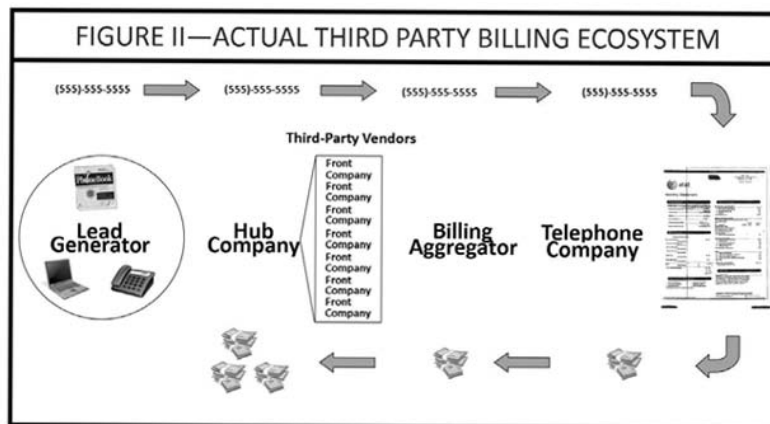


Figure I illustrates the third-party charge process as it is usually described by the involved parties. The third-party vendor allegedly sells a consumer a service and obtains the consumer's "authorization" to bill his or her telephone number. The vendor passes the number to a billing aggregator, which in turn passes the number on to the telephone company that provides the consumer's landline telephone service. The vendor's charge then begins appearing on the customer's telephone bill. Once a customer pays his or her bill, the telephone company collects the portion of the payment that covers the third-party charges and, after taking its fees for placing the third-party charges, distributes the revenue to the billing aggregator, which then distributes to the corresponding third-party vendor.

As Committee staff conducted the investigation, it became apparent that the actual third-party billing ecosystem is more complicated. Many third-party vendors are actually "front companies" for "hub companies" that handle every aspect of the vendors' business. In other words, many third-party vendors do not actually provide the services they claim to provide in their applications to the telephone companies. Committee staff found dozens of examples of third-party vendors that were in fact controlled by hub companies.



plaints from its customers. Letter from David E. Ferguson, Vice President—Customer Services, Shenandoah Telephone Company, to Senator John D. Rockefeller IV (July 5, 2011). The Western Telecommunications Alliance told Committee staff that some of its members terminated third-party billing "out of respect for their customers' dissatisfaction with being" crammed and due to "spending an inordinate amount of time and resources trying to get those charges removed from their customers' bills." E-mail message from Western Telecommunications Alliance to Commerce Committee Staff (July 11, 2011).

The apparent purpose of hub companies is to game the third-party billing system. If a large number of consumers complain to telephone companies or law enforcement authorities about a particular third-party vendor, the hub company can simply shift additional enrollments to other third-party vendors it controls. When one larger company operates through multiple smaller third-party vendors, it is more difficult for telephone companies and other authorities to determine how much cramming is occurring and who is responsible for it. Part V of this report provides detailed information about hub companies Committee staff examined during this investigation.

Complicating matters further, Committee staff found evidence that hub companies outsource marketing and enrollment to companies called “lead generators.” Lead generators are paid to obtain customers’ “authorizations” to bill their telephone numbers. They pass the allegedly authorized telephone numbers onto the hub companies, which then pass the numbers to the billing aggregators under the names of different front companies. This arrangement invites abuse because lead generators are apparently paid based upon how many consumers they enroll, rather than for providing services or maintaining relationships with customers. Their practices will be discussed further in the next section of this report.

B. The Cost and Scope of Third-Party Billing

To understand the scope of third-party billing, the Committee requested financial information about third-party billing from eight providers of landline telephone service—AT&T, Verizon, Qwest, CenturyLink, Windstream, FairPoint, Frontier, and Cincinnati Bell. Based upon the information the Committee obtained in response to these requests, third-party billing on landline telephone bills is a billion-dollar industry. In recent years, approximately 300 million separate third-party charges, worth more than \$2 billion, have been placed on landline customers’ telephone bills each year.³² As will be discussed further below, the information Committee staff has reviewed during this investigation suggests that a substantial percentage of these charges were unauthorized.

The information provided by the telephone companies also shows that they earn significant revenues by placing third-party charges on their customers’ bills. For example, Verizon explained to the Committee that it “receives a flat fee between \$1 and \$2 per charge for placing third-party charges” on its customers’ bills.³³ In the past decade, telephone companies have generated well over a billion dollars in revenue through third-party billing. Since 2006, AT&T, Qwest, and Verizon, in total, have earned more than \$650 million through third-party billing.³⁴

IV. Cramming Through Third-Party Billing

Over the past year, Committee staff has confirmed millions of instances of cramming on thousands of landline telephone bills. Unauthorized third-party charges have harmed all types of telephone customers, from residences and small businesses, to large companies and government agencies. Although it is difficult to determine precisely how many third-party charges are unauthorized, the evidence obtained through this investigation overwhelmingly suggests that it is a substantial percentage. Because so many third-party charges are unauthorized, the third-party billing system that was initially promoted as a “convenience for telephone customers” has instead made them targets for scams. Third-party billing has likely cost telephone customers billions of dollars in unauthorized charges and wasted time over the past decade.

Committee staff has reviewed thousands of pages of complaints and letters from angry, frustrated landline telephone customers who did not understand why third-party vendors were allowed to place unauthorized charges on their telephone bills or why their telephone companies refused to resolve the unauthorized charges for them. Telephone customers used words like “fraud,” “scam,” “theft,” “hoodwinked,” “shocked,” “disgusted,” “upset,” “stealing,” “bad business,” “taking advantage,” “disappointed,” and “unethical” to describe their experiences with third-party billing. In

³²The Committee requested the number of third-party charges, the dollar value of the third-party charges placed on consumers’ telephone bills, and the revenue made by the telephone companies for placing third-party charges on consumers’ telephone bills. In some cases, the companies were unable to provide the information for the complete requested length of time. Although the data provided in this report are presented in aggregate, it should be noted that the number of third-party charges, dollar value of third-party charges, and revenue derived from third-party charges have declined over the past 2 years.

³³Letter from Mark J. Montano, Verizon Assistant General Counsel, to Erik Jones, Counsel to the Senate Commerce Committee (July 30, 2010).

³⁴Verizon and Qwest provided the Committee with revenue broken down by billing aggregator. AT&T provided a total for third-party billing. As a result, this figure may include non-aggregator derived revenue.

a complaint to the Better Business Bureau (BBB), an AT&T customer shared the following sentiment, which is also expressed in thousands of other complaints:

I am concerned for many like myself who really have to decide whether they are going to pay their bills or eat for the month. When I have tried [to contact] these fly by night companies who are bil[k]ing me with AT&T's blessing, I get the runaround or disconnected. This is very frustrating and it needs to stop. I never agreed to have AT&T allow third party billers to charge me for services I never ordered and do not want.³⁵

A. How Cramming Occurs

For cramming to occur, three separate actions are required: (1) a third-party vendor obtains the telephone number of a consumer who has allegedly purchased a service, (2) the third-party vendor submits that telephone number to a telephone company through a billing aggregator, and (3) the telephone company places the allegedly "authorized" charge for the third-party vendor on the consumer's telephone bill. Because telephone companies do not have their own processes to determine if a consumer has "authorized" a charge, once a company engaged in cramming has obtained a consumer's telephone number, it is a simple process to have the charge placed on the consumer's telephone bill. As a result, at its most basic level, cramming is about obtaining telephone numbers.

Crammers obtain telephone numbers in one of two ways. They either obtain a consumer's telephone number without ever interacting with the consumer; or they dupe a consumer, through abusive marketing, into providing his or her telephone number and "authorization." When they are asked to provide proof that a consumer has "authorized" a charge, crammers routinely provide information that is inaccurate or insufficient to show that a consumer knowingly purchased the service.

1. No Consumer Involvement

In the 1990s, the GAO observed that "[s]ome vendors apparently have simply lifted names and numbers from telephone directories to charge businesses for non-existent services."³⁶ Through its investigation, Committee staff has obtained evidence showing that, over a decade later, third-party vendors continue to engage in similar practices. A third-party vendor needs nothing more than information that is publicly available, or that can be purchased from "lead generators," to enroll consumers in its so-called services. Unlike credit cards, which consumers know to protect, telephone numbers are widely available. Once crammers have obtained this information, it is a simple process to submit those numbers to telephone companies.

Telephone customers frequently submit complaints to telephone companies, consumer advocates, and regulatory offices with proof that they did not provide their telephone numbers to the third-party vendors that placed charges on their bills. The following examples are representative of thousands of complaints reviewed by Committee staff.

Deceased Relatives Many telephone customers complained that third-party vendors provided the names of deceased relatives when asked who authorized the charges on their telephone bills. A telephone customer stated, "they informed me my deceased son, he died 9 years ago, had signed me up for this service,"³⁷ while another stated, "they told me it [the service] was ordered by Jean W.—he has been deceased for 36 years."³⁸ Another frustrated customer stated, "They informed me that my husband . . . had ordered the service and I would have to know his security information. When I explained that my husband died 13 years ago, they told me that I must have ordered it in his name."³⁹

Incorrect Personal Information Telephone customers repeatedly complained that the information that third-party vendors provided as proof of authorization was incorrect. A Verizon customer complained that "it was done in our daughter's name but with her actual name reversed, wrong e-mail address, wrong birth date, but with our correct home phone number and home address. Neither we nor she ever signed up for this service."⁴⁰

³⁵ Better Business Bureau, Complaint Activity Report, Case No. 27102339 (June 29, 2009) (AT&T Doc. CST009711).

³⁶ General Accounting Office, *Overview of the Cramming Problem* (GAO/T-RCED-00-28) (Oct. 25, 1999).

³⁷ Consumer complaint to Arkansas Attorney General (Dec. 14, 2009) (AT&T Doc. CST029520).

³⁸ Consumer complaint to Kansas Attorney General (Nov. 1, 2009) (AT&T Doc. CST030067).

³⁹ Consumer complaint to Oregon PUC (July 2, 2008) (Qwest Doc. QSC0015024).

⁴⁰ Consumer complaint to Verizon (Aug. 20, 2009) (Verizon Doc. VZ_003_002040).

A Connecticut resident complained that a third-party vendor called Billviaphone.com had his address wrong and had informed him that “Michael . . . had signed up online.”⁴¹ He explained that, “[t]here’s no Michael here, just Mark & Nancy.”⁴² In another complaint, a manager from the Oklahoma Corporation Commission contacted AT&T on behalf of an Oklahoma resident. She was “concerned” about the proof of enrollment that had been provided because it was not the information for the person who had been charged.⁴³

Unpublished Numbers Numerous businesses and government agencies told Committee staff they have incurred crammed charges on telephone lines that are dedicated to alarm systems, elevators, modems, and other lines that are not assigned to any employees. They stated that they do not believe their employees could have enrolled those telephone lines in any services because the telephone numbers for the lines are unpublished and unknown to employees. For example, a large, multistate bank sent Committee staff a spreadsheet showing the following examples of cramming since May 2010:

- alarm lines incurred charges for directory listings, “eBusiness Marketing Materials,” “online business,” electronic facsimile, long distance plans, and Internet radio;
- an ATM line incurred charges for “Internet services;”
- remote call forwarding lines incurred charges for “Instant 411,” online coupons, directory listings, photo storage, electronic facsimile, monthly ringtones, IT support, Internet TV, and music downloads;
- a modem line incurred charges for voice-mail;
- a data line incurred charges for music downloads;
- emergency call lines incurred charges for electronic facsimile and online diet services;
- equipment monitoring lines incurred charges for voice-mail;
- a VoIP test line incurred charges for music downloads; and
- a facsimile line incurred charges for online entertainment news.

Another bank told Committee staff that it believes that much of the \$20,000 worth of cramming it incurred in the first several months of 2011 occurred on unpublished telephone numbers for modems, alarms, facsimile machines, and other telephone lines that are not assigned to individual employees. An office property company reported that it has incurred charges on telephone lines for elevators and alarms. The U.S. Naval Computer and Telecommunication Station in San Diego stated that the crammed charges it has incurred on central office trunk lines must be “100 percent fraud” because Naval personnel do not know the telephone numbers associated with those lines, the numbers are unpublished, and the numbers do not appear on caller identification records because they are not connection points for telephone calls.⁴⁴

Fake Internet Enrollments Telephone customers have repeatedly complained that they were told they enrolled for third-party vendors’ services via websites, even though they did not have a computer or access to the Internet. An AT&T Arkansas customer explained, “I was told it was ‘triggered’ online. I have no computer . . . and have never been online.”⁴⁵

This type of complaint frequently came from senior citizens or their caregivers. A Qwest customer complaining on behalf of her father was told “that it was an online order of some sort,” but she explained that “her father who lives in an assisted living facility . . . does not own, or [know] how to use a computer.”⁴⁶

In a particularly egregious example, a man complained on behalf of his 82 year-old mother-in-law about a third-party vendor called Talent & More LLC,⁴⁷ which charged her telephone number for a “web-hosting personal profile” allegedly mar-

⁴¹ Consumer e-mail to Better Business Bureau of Connecticut (Aug. 21, 2009) (AT&T Doc. CST009842).

⁴² *Id.*

⁴³ E-mail from Oklahoma Corporation Commission to AT&T employees (Feb. 9, 2010) (AT&T Doc. CST0219835).

⁴⁴ Committee staff telephone interview with United States Navy personnel (May 2, 2011).

⁴⁵ Consumer complaint to Arkansas Attorney General (Dec. 18, 2009) (AT&T Doc. CST029539).

⁴⁶ Consumer complaint to Oregon PUC (Apr. 24, 2008) (Qwest Doc. QSC0014820).

⁴⁷ Letter to the Office of the Connecticut Attorney General (July 22, 2009) (AT&T Doc. CST 2622056).

keted to “casting agents” for “booking talent.”⁴⁸ When he called Talent & More to dispute the charges, the company “insisted that she ordered the web design services via the Internet and refused to remove the charges.”⁴⁹ In a letter to the Connecticut Attorney General, the son-in-law explained, “My Mother-in-Law is 82 years old, does not have Internet access, and would not know how to use a website.”⁵⁰

Even telephone companies realized that Internet enrollment for third-party charges on telephone bills was vulnerable to fraud. In June 2009, a Verizon employee who worked in the company’s Cyber Security and Telecommunications Fraud group received a cramming complaint from the Michigan State Police. When the Verizon employee reviewed the letter of authorization [LOA] that purported to show that a Michigan consumer had enrolled in a service called Diamond Debt Solutions, he sent an e-mail message to a Verizon employee who worked on third-party billing issues. He wrote:

I received the LOA [letter of authorization]. Thanks. Wow. A person goes online and fills that out, and once they put in the phone number that person gets the bills. System open for abuse or fraud. If I worked for Diamond Debt Solutions I could sit at home tonight and fill out a bunch of these, especially if I had a non-static IP address. Does Verizon get paid by companies like Paymentone, ILD, etc, for us doing their billing, or does the govt make us?⁵¹

2. Abusive Marketing

Small business owners repeatedly complain to their telephone companies, their state attorneys general, their state public utilities commissions, and the BBB that third-party vendors use abusive marketing, commonly through telemarketing, to charge their telephone numbers for services they did not authorize or use. This abusive practice dates back to the 1990s.

Small business owners reported that telemarketers enroll their businesses by calling their main lines, typically answered by clerks, cashiers, or part-time employees, and reading quickly through scripts that are difficult to follow. When small business owners challenge the third-party charges, the third-party vendors either cannot provide a recording of the alleged authorization or they provide a recording that shows their employees did not understand what was occurring during the call.

In a complaint to the California Public Utilities Commission, a small business owner explained:

Our company was charged 4 times the amount of \$49.95 for a total of \$199.80 for services never ordered. When I called the company they told us that someone named Johnny Thomson had ordered services, a person we never heard of. I asked to hear the recording message with the order and Brianna [an employee of the third-party vendor] refused to let me do so.⁵²

An anesthesiologist in Indiana discovered two years’ worth of unauthorized third-party charges on his AT&T telephone bill and instructed one of his employees to call the company placing the charges. The third-party vendor told the employee that she had authorized the charge, but she was told “the recording was unavailable at the time.”⁵³ A small business in Tennessee that specializes in landscape design and maintenance wrote a letter to AT&T stating, “[t]hey said (during both phone conversations) that they had a recording of the conversation and they would e-mail it to me within 72 hours to confirm their assertion that I agreed to charges. On both occasions the company has failed to produce a recording.”⁵⁴

When recordings were provided to small business owners, they did not demonstrate that the businesses had authorized the services. An insurance agent in Missouri explained:

A telemarketer . . . contacted my business and added 2 separate services I already had or did not want. The first person they talked to was a part-time 17-year-old student who did filing only. The other was a 20-year-old apprentice

⁴⁸Talent and More LLC, “About Us” Page, (online at www.talentandmore.com/talent/index.php?page=about) (accessed on Jul. 7, 2011).

⁴⁹Letter to the Office of the Connecticut Attorney General (July 22, 2009) (AT&T Doc. CST 2622056).

⁵⁰*Id.*

⁵¹Internal Verizon e-mail (June 11, 2009) (Verizon Doc. VZ_004_232436).

⁵²Complaint to the California Public Utilities Commission, CPUC Case Number: 08-05-6106 (Aug. 27, 2008) (AT&T Doc. CST017883).

⁵³Better Business Bureau, Complaint Activity Report, Case No. 27123938 (Dec. 4, 2009) (AT&T Doc. CST009926).

⁵⁴Letter to AT&T (Feb. 6, 2010) (AT&T Doc. CST009897).

. . . at no point did they ask for the owner . . . You can tell in the recording the young girl was confused.⁵⁵

Through the investigation, the Committee has obtained voice “verification” recordings of third-party vendors conducting telemarketing. The recordings show telemarketers quickly reading through very long scripts, while employees answer “yes” or “OK” to questions they clearly do not understand. Business owners also allege that these recordings are sometimes altered to falsely show that the business owner authorized the charge. The owner of an Iowa agriculture business complained to the Iowa Utilities Board in 2008 that a recording purportedly verifying his purchase of a long distance service “sounds like his voice at the beginning and the end of the recording, but not in the middle of the recording, in which the authorization is given.”⁵⁶

Many business owners also complained that on unrecorded portions of the telemarketing calls, crammers falsely promised that the business would receive free services. The business manager of a Missouri veterinary clinic complained to the FCC and BBB that his office was charged by a vendor called the “Official Small Business Association,” after a telemarketer assured him that the only purpose of the call was to verify the company’s information “for an Internet directory listing.” The manager said he responded affirmatively to the telemarketer’s verification questions only because he thought the Internet directory listing was free.⁵⁷

These accounts are consistent with the experiences of other law enforcement officials. At a recent FTC forum, Illinois Assistant Attorney General Elizabeth Blackston described two common fraudulent telemarketing tactics used against small businesses:

[O]ften we see what we construe to be a deceptive and untaped sales pitch followed by the taped verification conversation. And another scenario we’ve seen is, in some cases, we don’t even believe that the verification of the telemarketing actually took place. And the reason we think this is because whenever we request information from the company, when someone has complained to us . . . in the case of a small business, we’ll be provided with the name of someone who never worked for the company.⁵⁸

B. Cramming’s Impact on Telephone Customers

Unauthorized third-party charges have harmed all types of telephone customers, from residences and small businesses, to government agencies and large companies. Every part of the private sector and all levels of government have been harmed by cramming. A consistent theme running through the many stories of consumer cramming that have been reviewed during this investigation is that while it appears to be very easy for a third-party vendor to place unauthorized charges on consumers’ phone bills, it is difficult and time-consuming for consumers’ to remove these charges from their bills and receive refunds.

Committee staff has spoken with hundreds of residential customers and dozens of nonresidential customers who have been crammed, and have reviewed thousands of complaints that telephone customers submitted to the FTC, FCC, BBB, state attorneys general, and telephone companies. Using this information, Committee staff compiled summaries of telephone customers’ experiences with cramming (See Appendix A) and a sample list of businesses, governmental entities, and nonprofit organizations that have been crammed (See Appendix B).

1. Time and Money

The unauthorized charges that are crammed onto telephone customer’s bills are typically between \$10 and \$50. These charges, although relatively minor if they occur only once, can quickly amount to significant losses for telephone customers. To maximize revenue, crammers charge consumers on a recurring monthly basis for their “services,” so that the charges will continue as long as consumers fail to discover them.

⁵⁵Better Business Bureau, Complaint Activity Report, Case No. 27108381 (July 31, 2009) (AT&T Doc. CST010018).

⁵⁶Billing on Petition for Judicial Review, *Office of Consumer Advocate v. IA Utilities Board and Sibbald Communications*, Iowa D. Ct., Polk County (Case No. CVCV008184) (June 30, 2011).

⁵⁷Federal Communications Commission, Informal Complaint # 10–C00239929–1 (Aug. 16, 2010). This complaint was improperly adjudicated as a “slamming” complaint. *In the Matter of Official Small Business Association*, IC No. 10–S2806974 (Jan. 31, 2011).

⁵⁸Federal Trade Commission Cramming Forum, *Examining Phone Bill Cramming, A Discussion* (May 11, 2011) (online at <http://www.ftc.gov/bcp/workshops/cramming/>).

Residences and small businesses affected by cramming have generally experienced losses in the hundreds and thousands of dollars.⁵⁹ Larger organizations, like government agencies and corporations, sometimes experience unauthorized third-party charges worth tens of thousands of dollars a year.⁶⁰ Because large organizations often have thousands of telephone lines in hundreds of locations, they are particularly susceptible to cramming.

For example, the United States Postal Service would have incurred over \$500,000 worth of unauthorized charges if it had not hired a company to audit its telephone bills, while a large food chain told Committee staff that it incurs approximately \$100,000 worth of unauthorized charges on a yearly basis.⁶¹ Even AT&T experiences cramming on its telephone lines. Committee staff confirmed that third-party vendors associated with one hub company crammed at least 80 of AT&T's own telephone lines with charges for services such as voice mail, sometimes for periods as long as 18 months.⁶²

Battling unauthorized third-party charges also costs telephone customers significant amounts of time, effort, and money. Telephone customers shared the following experiences in complaints, which are similar to those of thousands of other customers:

- A Qwest customer stated, “this is the 5th time that I have had charges added to my bill . . . [e]very time I have spent at least a half hour of my time getting these services removed . . . I’m sick of this.”⁶³
- An AT&T customer expressed his frustration after he tried unsuccessfully to have third-party charges removed from his bill. He stated, “[t]his is the 2nd or 3rd time within about 4 years that something like this has happened to us with AT&T . . . where they arbitrarily allow 3rd party companies to start billing for some claimed service. THIS IS BUSINESS FRAUD.”⁶⁴
- A Verizon customer stated, “I had to call ESBI [a billing aggregator] to tell them to remove this from my bill as I never ordered voice-mail from either company. This happens quite often and it appears that Verizon allows them to do this. Verizon is also in on this little scam, otherwise, how could it get on the bills they send out.”⁶⁵

As will be discussed further in Part VI, telephone companies frequently failed to satisfactorily address their customers’ cramming inquiries. The complaints obtained through the investigation showed that telephone customers often needed to enlist the help of state regulatory agencies or the BBB in order to receive assistance from their telephone companies. Telephone customers also spent countless hours trying to stop third-party charges by directly contacting third-party vendors or the billing aggregators.

2. Not a “Customer Convenience”

In their complaints to the BBB, telephone companies, state public utilities commissions, and state attorneys general, telephone customers repeatedly asked why third-party billing was allowed to occur. An AT&T customer from Michigan, after experiencing unauthorized charges for an e-mail service, commented, “This practice is weird. It would be like getting an electric bill with my propane bill. It doesn’t make any sense.”⁶⁶

In 2009, AT&T surveyed and interviewed some of its larger nonresidential customers, including educational institutions, government offices, and corporations. When AT&T asked the customers to make suggestions for improving AT&T’s billing services, many of the customers, without prompting, brought up the issue of cramming. They stated they were angry that AT&T allowed third-party vendors to place charges on their bills without authorization. They also expressed frustration that

⁵⁹ See Appendix A, “Cramming Case Studies,” for summaries of telephone customers’ experiences with third-party billing and cramming.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 86 separate e-mails from AT&T employees to billing aggregator ESBI regarding cramming on 86 AT&T corporate telephone lines (dated Mar. 2, 2009–Nov. 4, 2010) (produced to Committee by daData, Inc., without Bates numbers).

⁶³ State of Utah, Division of Public Utilities, Informal Complaint Report, Index No. 3343 (Aug. 3, 2010) (Qwest Doc. QSC0015631).

⁶⁴ State of California, Public Utilities Commission, CPUC Case No. 08–05–6676 (Aug. 29, 2008) (AT&T Doc. CST017888).

⁶⁵ Federal Trade Commission, Complaint Database, Reference No. 26258283 (Apr. 27, 2010).

⁶⁶ Better Business Bureau, Complaint Activity Report, Case No. 27135807 (Mar. 9, 2010) (AT&T Doc. CST009999).

AT&T placed the burden on customers to cancel the charges and obtain billing credits for charges they should not have incurred in the first place.

Suggestions for stopping third-party billing and other negative statements included the following:

- *University of Texas System*: “My biggest complaint is the unauthorized charges ‘cramming’ that frequently appear on my bill.”⁶⁷
- *City of Alexandria, LA*: “Do not allow third parties to bill charges to my account.”⁶⁸
- *City of Elmhurst, IL*: “Not allow any third-party billing. Companies access to our account. We were ‘crammed’ for six months.”⁶⁹
- *United Van Lines*: “Stop all third party charges. Take ownership of removing third party charges when disputed.”⁷⁰
- *Questar Corporation*: “Stop allowing third party charges to be attached to account without prior approval.”⁷¹
- *Hibbett Sports*: “Don’t allow third party vendors to bill us on your bill. This issue makes us very mad and we are considering moving all of our [the rest of the sentence is cutoff].”⁷²
- *Valero Energy Corp.*: “We have many issues with third party billers for products we have not requested. It would be nice if you could block all of our accounts from these third party billers.”⁷³
- *Children’s Medical Center of Dallas*: “. . . Hate the passing through of bad/fraudulent billing of other companies.”⁷⁴
- *Jackson Park Hospital Foundation*: “Too many 3rd party billing issues after blocks were in place!”⁷⁵
- *Doctors Hospital of Springfield*: “You need to offer a blanket vendor freeze on accounts. It is too easy for unauthorized people to add stuff to bill.”⁷⁶
- *Crestwood Behavioral Health, Inc.*: “Third party billers should not be allowed.”⁷⁷

C. Telephone Bill Auditors

During the investigation, Committee staff learned that companies, government agencies, and nonprofits frequently hire firms specializing in telephone bill audits to help them discover unauthorized charges on their bills and dispute those charges. In response to requests from the Committee, seven auditing companies sent the Committee information related to cramming.⁷⁸ Collectively, these seven auditing firms helped more than 800 clients deal with cramming on their landline telephone bills during the past 5 years. Their clients were nonprofits, municipal governments, Federal Government offices, and businesses from all parts of the private sector, including legal services, financial services, manufacturing, retail, automotive, health care, and pharmaceuticals. As the table shows, the auditors identified cramming charges on most of their clients’ bills.⁷⁹

According to information the companies provided to the Committee, almost all of the third-party charges they identified on their clients’ bills—more than 300,000—were not authorized by their clients. The firms also explained that they disputed

⁶⁷ Response to AT&T Survey (Oct. 1, 2009) (AT&T Doc. CST2389396–98).

⁶⁸ Response to AT&T Survey (Nov. 2, 2009) (AT&T Doc. CST2389384–86).

⁶⁹ Response to AT&T Survey (Sep. 25, 2009) (AT&T Doc. CST2389416–18).

⁷⁰ Response to AT&T Survey (Sep. 1, 2009) (AT&T Doc. CST2389317–19).

⁷¹ Response to AT&T Survey (Nov. 25, 2009) (AT&T Doc. CST2389321–23).

⁷² Response to AT&T Survey (Aug. 13, 2009) (AT&T Doc. CST2389289–91).

⁷³ Response to AT&T Survey (Nov. 3, 2009) (AT&T Doc. CST2373551–53).

⁷⁴ Response to AT&T Survey (Oct. 16, 2009) (AT&T Doc. CST2389348–50).

⁷⁵ Response to AT&T Survey (Sep. 1, 2009) (AT&T Doc. CST2389356–58).

⁷⁶ Response to AT&T Survey (Dec. 10, 2009) (AT&T Doc. CST2389360–62).

⁷⁷ Response to AT&T Survey (Sep. 24, 2009) (AT&T Doc. CST2389364–66).

⁷⁸ The Committee sent eight firms requests for data related to cramming: Advantage IQ, Inc., Advocate Networks, LLC, Cass Information Systems, Inc., ProfitLine, Inc., SpectraCorp Technologies Group, Symphony Services Corp., Tangoe, Inc., and Xigo, LLC. Symphony Services Corp. did not provide data because detection of crammed charges “is not a key focus of its telecom services business,” and it would have needed to spend “significant time and expense” to provide the requested data.

⁷⁹ Due to confidentiality agreements with their clients, the auditors requested that the information they provided to the Committee be presented in a manner that did not specifically identify companies.

cramming charges placed by hundreds of different third-party vendors.⁸⁰ One firm estimated that 800 different third-party vendors had placed unauthorized charges on its clients' telephone bills during the past 5 years.

Telephone Auditing Company	Clients Experiencing Cramming
A	100%
B	100%
C	90%
D	90%
E	85%
F	71%
G	65-70%

The auditing firms also reported that some of their clients incurred staggering amounts of unauthorized charges on their landline telephone bills. One firm reported that a client incurred more than 14,000 unauthorized third-party charges over a twelve-month period, and that a pharmaceutical company client incurred more than \$334,000 in crammed charges during a twelve-month period. Another auditor estimated that one of its clients experienced more than 3,700 unauthorized third-party charges during a twelve-month period, totaling more than \$60,000 in charges. A third reported that it identified more than 1,900 instances of unauthorized third-party charges on one individual client's telephone bills in 2009, and that one of its clients would have incurred more than \$1 million in crammed charges in 2009 if the audit company had not been actively monitoring and canceling the crammed charges.

V. Illegitimate Third-Party Vendors

As part of its investigation into cramming and third-party billing, the Committee requested that AT&T, Qwest, and Verizon provide a list of the third-party vendors they had allowed to place charges on their customers' landline telephone bills. The Committee took this step because, in recent years, state and Federal authorities have brought multiple law enforcement cases showing that illegitimate third-party vendors were able to repeatedly cram telephone customers without triggering telephone companies' monitoring systems. One of the goals of this investigation has been to determine how many crammers are currently operating on the telephone companies' landline billing systems.

A. Overview of Approved Third-Party Vendors

Using information provided by AT&T, Qwest, and Verizon, Committee staff compiled a list of approximately 1,000 different third-party vendors that are currently billing or have recently billed landline telephone bills (See Appendix C for a sample

⁸⁰As one auditing firm stated, "the constant change in names used and line items billed" makes it difficult to state the precise number of different third-party vendors that have placed third-party charges on the auditing firms' clients' telephone bills.

list of third-party vendors). These companies allegedly offer consumers a variety of services, including voice mail, webhosting, electronic fax service, online gaming, e-mail, online photo storage, online backup, and roadside assistance.

The Committee staff's review of these companies suggests that many of them are not engaged in legitimate commerce. Thousands of consumers have complained about many of these third-party vendors to state regulatory agencies, the FTC, FCC, BBB, telephone companies, and consumer-oriented websites for placing unauthorized third-party charges on their telephone bills. As of November 2010, the BBB had given either a 'D' or an 'F' grade to at least 250 of these companies for unresolved complaints related to unauthorized third-party charges on landline telephone bills.⁸¹

Many of these third-party vendors appear to be created solely to exploit the weaknesses of third-party billing on landline telephone bills. They do not market their services, their websites are barely functional, and they offer services that consumers would unlikely purchase knowingly. Committee staff also found that many of these seemingly unrelated third-party vendors shared nearly identical websites and had the same addresses or contact information. Rather than hundreds of different companies, it appeared that a smaller number of "hub companies" used third-party vendors as "front companies" to conduct their business with the telephone companies.

B. Third-Party Vendors Investigated by the Committee

To better understand the relationships between third-party vendors, the Committee requested information from three companies—daData, Inc., My Service and Support, and MORE International. Committee staff found that most of the third-party vendors related to each of these companies were actually "front companies" that have no real corporate structure or assets, and play no role in providing products or services to consumers. Over the past several months, Committee staff has called hundreds of these companies' "customers," and has yet to locate a single individual who says he or she authorized these companies to charge their phone bills, or has used a service these companies purportedly offered.

1. Interrelated Third-Party Vendors

The Committee requested information from each company to determine what role they played in third-party billing. The evidence obtained by the Committee suggests that daData, My Service and Support, and MORE International are each part of complex enterprises that are engaged in cramming and designed to conceal their true activities and structure from the public and telephone companies.

daData daData acknowledged to the Committee that it shared common ownership with at least eight third-party vendors.⁸² For approximately 40 other third-party vendors, daData first informed the Committee that it provided "support services . . . including marketing, quality control, customer service, billing regulatory, and accounting services."⁸³ daData referred to its clients as "a diverse group of businesses that offer technically-driven products and services directly to consumers and businesses."⁸⁴

After further questioning from Committee staff, daData acknowledged that it actually controlled the technology for most of the services that its "clients" allegedly offered. For example, approximately 25 of daData's "clients" offered an electronic facsimile service to telephone customers.⁸⁵ daData first explained that these "clients" provide customers with a personal electronic fax number and the ability to send and receive faxes on a computer without any specialized equipment."⁸⁶ daData later admitted that it controlled the electronic fax service that these third-party vendors of-

⁸¹This figure does not mean that only 250 third-party vendors received a 'D' or 'F' from the BBB. Committee staff started reviewing BBB scores to understand the kinds of companies using third-party billing. Once staff reached 250 companies with 'D' or 'F' grades from the BBB, it stopped the review. If the review had continued, the number would have been higher.

⁸²These third-party vendors were: My Info Guard, LLC; New Link Network, LLC; NS Voice-mail, LLC; Total I Protect, LLC; Total Protection Plus, LLC; USA Voice-mail, Inc.; Vendor Promotions, Inc.; and VoiceXpress, Inc. Letter from Andrew Lustigman, counsel to daData, to Senator John D. Rockefeller IV (Jan. 21, 2011), at 12.

⁸³*Id.* at 2.

⁸⁴*Id.*

⁸⁵Committee staff obtained a username from BLVD Network, a daData "client" allegedly offering "electronic fax." Committee staff was able to use the same user name and password to log into more than a dozen different electronic fax service websites that were "clients" of daData's. The impact of interrelated third-party vendors is discussed further in Section V.

⁸⁶Letter from Andrew Lustigman, Counsel to daData, to Senator John D. Rockefeller IV (Feb. 17, 2011) (hereinafter "Lustigman Feb. 17, 2011 Letter"), at 3-6; Letter from Andrew Lustigman, counsel to daData, to Senator John D. Rockefeller IV (Jan. 21, 2011) (hereinafter "Lustigman Jan. 21 Letter"), at 3.

ferred.⁸⁷ Committee staff also confirmed that daData was listed as the “registrant” for these third-party vendors’ websites. A review of these websites shows that they are remarkably similar (See Appendix D, “Websites for daData-Related Third-Party Vendors That Offered ‘Electronic Fax Services’”).

It appears daData controls every aspect of third-party billing for most of its “clients,” from hiring the lead generators that collect telephone numbers, to providing refunds for “customers” who complain about unauthorized charges on their telephone bills. daData and many of its “clients” appear to be a common enterprise.

My Service and Support (“MySnS”) MySnS informed the Committee that it is a “back office solutions provider that offers web development, product development, validation services, regulatory services . . . customer service, call center services . . . market research and other business solutions.”⁸⁸ The company also explained that it “does not market or offer services to consumers nor does it directly bill consumers” and that, consequently, “MySnS does not engage in ‘cramming.’”⁸⁹ MySnS only acknowledged a “business relationship” with third-party vendors that “may have billed consumers via the consumers’ telephone numbers.”⁹⁰

When a *New York Times* reporter tried to contact a third-party vendor called MyTeleServices in 2009 regarding an alleged cramming charge, he was connected instead by the billing aggregator ESBI to Paul Monette, a “spokesman” for MySnS. Mr. Monette informed the reporter that his company “handles customer service for MyTeleServices and a few dozen other companies.”⁹¹

Despite these statements, Committee staff has obtained evidence showing that MySnS and its so-called “clients,” are interrelated. A certificate of ownership obtained by the Committee listed Paul Monette, the vice president of sales and marketing for MySnS, as sole owner of BillWithUs, an alleged “client” of MySnS.⁹² Other documents showed individuals with the surname, “Morrison,” listed as employees of MySnS, and owners of both MySnS and its alleged “clients.” According to the BBB’s website, Geoff Morrison is the CEO of MySnS, while Brenda Morrison and Michael Morrison are presidents for the company.⁹³ John Morrison is also listed as a contact.⁹⁴ A certificate of ownership for MySnS obtained by Committee staff listed a “Mildred Morrison” as its owner.⁹⁵ Certificates of ownership for MyTeleServices, Agora Solution, and LowCostBilling, alleged “clients” of MySnS’s, listed a “John R. Morrison” as the sole owner of the companies,⁹⁶ while a “Brenda Morrison” informed the Committee that she is “the only owner of MyBillingGuys, LLC,” another alleged MySnS “client.”⁹⁷

MORE International MORE International informed the Committee that, at one time, it shared common ownership with EZPhoneBill, a third-party vendor that enrolled consumers in online gaming services. For the additional ten third-party vendors that the Committee linked to MORE, the company explained that it provided “customer support” and “management of processing and billing” for these companies.⁹⁸

MORE explained that Gary Jonas and Jeff McKay, the owners of ModernAd Media and The Payment People, respectively, “directed the formation” of the third-party vendors and “identified individuals to serve as presidents.”⁹⁹ Like third-party

⁸⁷ daData Response to Question #1(a) of Dec. 17, 2010 Letter from Chairman Rockefeller to Mr. Charles Darst (Mar. 22, 2011) (daData Doc. DAT158629–30).

⁸⁸ Letter from Joel R. Dichter, counsel to MySnS, to Senator John D. Rockefeller IV (Jan. 19, 2011).

⁸⁹ *Id.*

⁹⁰ *Id.* at 3. These third-party vendors include: Agora Solution; BillWithUs; GreenTreeData; LaurenTel; LowCostBiling; MyTeleServices; and MyBillingGuys.

⁹¹ *The Haggler: What Charges Lurk on the Phone Bill*, New York Times (Dec. 13, 2009).

⁹² BillWithUs Corporation, Certificate of Ownership (Dec. 11, 2007).

⁹³ Better Business Bureau, BBB Business Review for MyServiceandSupport, Inc. (online at www.bbb.org/minnesota/business-reviews/internet-service/my-service-and-support-in-new-hope-mn-96083470) (accessed July 11, 2011).

⁹⁴ *Id.*

⁹⁵ MyServiceandSupport Corporation, Certificate of Ownership (June 29, 2010).

⁹⁶ MyTeleServices Corporation, Certificate of Ownership (Apr. 24, 2005); Agora Solution Corporation, Certificate of Ownership (2001); LowCostBilling Corporation (July 3, 2006).

⁹⁷ Letter from Brenda S. Morrison, President of MyBillingGuys, LLC, to the Senate Committee on Commerce, Science, and Transportation (July 11, 2011).

⁹⁸ These third party vendors included: Blue Dog Online; Call Direct, Inc.; Connect Direct LD; Internet Business Advisors; Long Distance Mart; Sure Connection LD; Universal Call Plan; Voice-mail Club, Inc.; Web eCommerce Company; and Xoom Telecommunications, Inc. See Letter from Linda Goldstein, counsel for MORE International, to Erik Jones, counsel to the Senate Commerce Committee (Feb. 10, 2011), at 2.

⁹⁹ Letter from Linda Goldstein, counsel to MORE International, to Erik Jones, counsel to the Senate Commerce Committee (Mar. 24, 2011), at 3.

vendors related to daData and MySnS, these third-party vendors were also one common enterprise.

2. “Front Companies”

Committee staff has found ample evidence suggesting that the third-party vendors related to daData, MySnS, and MORE International were nothing more than “front companies” for larger “hub companies.” Committee staff found third-party vendors operating out of mailboxes in UPS Stores, Post Office boxes, fake offices, and residences, with “presidents” that knew nothing about the companies they were supposedly leading.

daData daData provided the Committee with a list of addresses for 48 different third-party vendors. Of these vendors, more than 20 were operating out of mailboxes in UPS Stores and United States Post Offices located throughout the country.

For example, Coast to Coast Voice, LLC, which charged thousands of consumers for “voice-mail services,” listed its “Company Address” as: 26 S. Main Street, Suite #237, Concord, NH 03301.¹⁰⁰ Using Google Maps, Committee staff found that 26 S. Main Street is the address of a UPS Store, and “Suite #237” is a mailbox within the store. For First Rate Voice Services, LLC, another third-party vendor, daData listed its address as: 576 North Birdneck Road, Ste 215, Virginia Beach, VA 23551.¹⁰¹ This location is a UPS Store and “Ste 215” is a mailbox within the store.

Committee staff also spoke to multiple “presidents” of the third-party vendors who acknowledged that they played no role in the day-to-day operations of the companies. For example, the “president” of WVM Network, LLC, a third-party vendor that charged thousands of telephone customers for electronic fax services, admitted that he “only signed his name to documents” and knew nothing about the company.¹⁰²

MySnS MySnS provided the Committee with the addresses of its alleged third-party vendor “clients.” Three of the third-party vendors, LowCostBilling, MyTeleservices, and Agora Solution, were listed at the same address in Mound, Minnesota. Multiple “address look up” websites showed this address as the home of John Morrisson, who is also listed as a “contact” for MySnS on the BBB’s website.¹⁰³

Committee staff spoke to the “presidents” of each company. They acknowledged that they had no involvement in the day-to-day operations of the companies and that MySnS markets the services, enrolls the customers, and handles complaints.¹⁰⁴

MORE International According to a lawsuit filed in 2009 by the Nevada Attorney General, the Payment People used “virtual offices” run by Regus Management Group to create the false impression that the company’s third-party vendors operated independently in various cities across the United States. A front company controlled by the Payment People called “Universal Call Plan, Inc.,” for example, claimed to operate out of a Regus virtual office space in Atlanta, Georgia, when it actually was operated by Jeff McKay and his associates in Modesto, California.¹⁰⁵

Committee staff recently discovered that another one of Mr. McKay’s front companies, the “Official Small Business Association” (OSBA), falsely claims to operate from a Regus virtual office space located within several blocks of the United States Capitol, at 601 Pennsylvania Avenue, NW in Washington, D.C. When Committee staff visited OSBA’s purported corporate headquarters, an office receptionist said that the address functioned as a mail drop for Mr. McKay, who actually resides in California.

Committee staff also spoke to the “president” of Xoom Telecommunications, one of the interrelated third-party vendors for which MORE International provided “customer service.” The “president” admitted to Committee staff that she knew nothing about the day to day operations of the company and that she was president because “a friend said ‘I could become president of a company.’” Her only apparent role was

¹⁰⁰ Lustigman Feb. 17, 2011 Letter, *supra* note 85, at 9.

¹⁰¹ *Id.*

¹⁰² Committee Staff Telephone Interview (May 19, 2011).

¹⁰³ Better Business Bureau, BBB Business Review for MyServiceandSupport, Inc. (online at www.bbb.org/minnesota/business-reviews/internet-service/myserviceandsupport-in-new-hope-mn-96083470) (accessed July 11, 2011).

¹⁰⁴ The president of GreenTreeData acknowledged that she did not use any of her own money to start the company and that, aside from signing paperwork, she had no involvement with the company, except to “receive a check every month.” She was not aware that GreenTreeData had received cramming complaints or that telephone companies had suspended it from third-party billing for excessive cramming complaints. Committee Staff Interview (Feb. 22, 2011). The president of LaurenTel told Committee staff that, “I guess I am like the CEO, but I’m not in the everyday part of it.” She was barely able to describe the services that LaurenTel offered. Committee Staff Interview (Feb. 4, 2011).

¹⁰⁵ Complaint for Injunctive and other Equitable Relief, *State of Nevada v. The Payment People, Inc., et al.*, D. Nev. (No. 09–0C00431 1B) (Oct. 2009), at 5, 6–8.

signing forms that were submitted to telephone companies. She receives a monthly check worth a few hundred dollars for serving as “president” of the company.¹⁰⁶

For GreenTreeData and LaurenTel, the Committee confirmed that the provided addresses were actually the homes of the companies’ “presidents” in Georgia and Virginia, respectively.

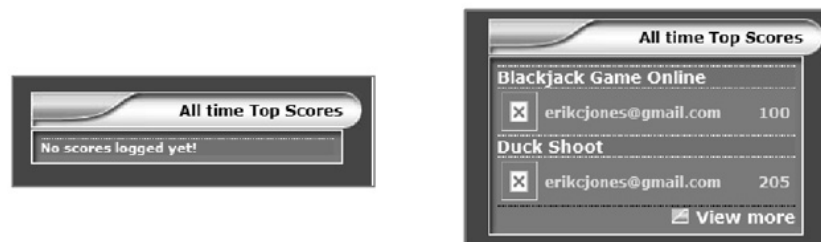
3. Low Rates of Usage

Committee staff obtained evidence from multiple third-party vendors showing that few, if any, of their “customers” were using the services for which the companies were charging them. These findings are consistent with those of other law enforcement inquiries into cramming. Low usage rates are strong evidence that consumers did not knowingly purchase the services and were not aware they were being charged for them.

“Voice-mail” Services MySnS’s third-party vendors each charged telephone customers for “voice-mail” services that were accessible only by dialing specific 1–800 telephone numbers. The Committee obtained MySnS’s telephone bill for December 2010, which showed that approximately 925 unique numbers dialed the 1–800 telephone numbers dedicated to “voice-mail” services during the month.¹⁰⁷ At the time, at least 97,000 telephone customers were being charged for these services.¹⁰⁸ At best, less than 1 percent of the telephone customers charged for “voice-mail” services used it in December 2010.

“Online Photo Storage” Services daData provided usage data for Coast to Coast Photo, Photo Cubbie, Residential Photo, and USA Photo House, which provided “online photo storage” and “100 prints per month” for \$14.95 per month. Of the 64,250 telephone customers that these third-party vendors enrolled in 2009 and 2010,¹⁰⁹ less than 2 percent loaded a digital picture to the websites.¹¹⁰

“Casual Online Gaming” Services With assistance from MORE International’s counsel, a counsel for the Committee enrolled in the “casual online gaming services” offered by EZPhoneBill, a third-party vendor associated with MORE, to determine whether enrolled telephone customers were using the company’s services. Committee staff had noticed that few, if any, “customers” appeared to be using its online gaming website, *games.ezphonebill.com*. Before Committee counsel accessed the website, the front page listed “No scores logged yet!” for its “All Time Top Scores,” even though it had enrolled more than 20,000 telephone customers in the service and generated almost \$1 million dollars by charging those customers \$14.95 per month.¹¹¹



After Committee counsel logged in to the website and tested two games, his personal e-mail address was immediately listed under the “All Time Top Scores” on the main page. He was listed with the “All Time Top Scores,” even though he merely opened two games, clicked a few buttons, and exited. Upon further investigation, Committee staff learned that the exact same games could be accessed for free at another website, *www.skillpod.com*. The games available on this website were not just similar to those on EZPhoneBill’s website. They were the exact same games with the same graphics. It appears EZPhoneBill has charged thousands of telephone

¹⁰⁶ Committee Staff Telephone Interview (Feb. 9, 2011).

¹⁰⁷ MySnS Corporate Telephone Invoice (Dec. 11, 2010) (produced to Committee on Apr. 15, 2011).

¹⁰⁸ The number of enrolled customers is likely much higher, as MySnS only provided enrollment data for a subset of the third-party vendors that used the 1–800 numbers for voice-mail services in December 2010.

¹⁰⁹ daData response to Questions 1(b), 1(j), and 1(k) (Apr. 1, 2011) (daData Doc. DAT158722).

¹¹⁰ Letter from Margaret Krawiek, Counsel to daData, to Senator John D. Rockefeller IV (Apr. 1, 2011).

¹¹¹ Letter from Linda Goldstein, Counsel to MORE International, to Erik Jones, Counsel to Senate Commerce Committee (Feb. 3, 2011).

customers for “casual online gaming services” they are not using and that can be accessed for free on another website.

4. Cancellation Calls from “Customers”

The Committee obtained data summarizing the nature of the calls that telephone customers made to the “customer service centers” for the third-party vendors related to daData and MORE International. This data also suggested that the companies’ “customers” never authorized charges for the companies’ alleged services. For the MORE International-related companies, the data showed that most of the calls to the companies’ “customer service center” were related to canceling the services or issuing credits.¹¹² In 2010, the “customer service center” apparently handled 19,227 calls for MORE International-related companies.¹¹³ During the year, only nine calls were categorized as “Tech Support,” while 8,986 were categorized as “Issue Credit” and 4,262 were categorized as “Cancellation.”¹¹⁴ Call data for daData-related third-party vendors also suggested the companies’ “customers” had not authorized charges to their telephone bills. During an 8-month period in 2010, of the 235,745 “customers” who called to cancel the services, 201,583 of the cancellation calls were categorized by customer service representatives as either “Business Number,” “Did Not Authorize,” “Did Not Understand,” “Does Not Remember,” “Un-Auth Employee,” or “Unauth Household Member.”¹¹⁵

5. Committee Staff Calls to the Third-Party Vendors’ “Customers”

The Committee obtained the contact information for thousands of the telephone customers who had been charged by third-party vendors that were related to daData, MySnS, and MORE International. At random, Committee staff called consumers who had allegedly purchased services from the following third-party vendors: BLVD Network, Total Protection Plus, MyInfoGuard, Coast to Coast Voice, Nationwide Assist Fax, TriVoice International, Agora Solution, MyBillingServices, Xoom Telecommunications, and EZPhoneBill.

Committee staff called approximately 1,700 randomly selected “customers,” and spoke to over 500 of them about their experiences. Not a single individual or business owner reported that they had authorized the third-party vendors’ charges on their telephone bills. Telephone customers either reported that they had already found the unauthorized charges and had them removed, or they were surprised to learn that their telephone bills included third-party charges.

Staff calls to “customers” of Total Protection Plus, for example, resulted in clear evidence of cramming. This daData-controlled vendor allegedly “offers customers electronic fax capabilities with online data back-up voice messaging with ID theft protection, and stand-alone voice-mail access.”¹¹⁶ daData informed the Committee that the Total Protection Plus “service” was marketed to individuals. The company provided the Committee the names, telephone numbers, and other information about customers who had allegedly purchased the service.

Although these documents identified the telephone numbers that were enrolled in Total Protection Plus as “Home Phone” numbers, Committee staff called dozens of the numbers and discovered that they belonged to government agencies and businesses. For example, some of the numbers belonged to a Taco Bell, a Wal-Mart, a Publix grocery store, the Broward County Sheriff’s Office, an emergency room, a Capital One bank, the Jacksonville Aviation Authority, a juvenile detention center, Prince George’s County Community Center, and the West Virginia Department of Highways. Documents daData produced to the Committee show numerous instances in which business and government offices complained that their telephone numbers had been enrolled in Total Protection Plus.

6. Enrollments and Financials

The third-party vendors related to daData, MySnS, and MORE International have enrolled millions of telephone customers in their “services” and have generated millions of dollars through recurring monthly charges. Over the past two years,

¹¹²MORE International informed the Committee that a company called TTC Marketing handled “customer service calls” and that it provided “weekly disposition reports detailing, among other things, the number of consumers that inquire about the charges on their phone bill, wish to cancel their service, and seek a refund.” Letter from Linda Goldstein, Counsel to MORE International, to Erik Jones, Counsel to the Senate Commerce Committee (Mar. 24, 2011).

¹¹³TTC Marketing Solutions, *DigiProd LLC Key Code Report* “For Calling Through 12/31/2010” (MORE Doc. MORE INTL 2061–2093).

¹¹⁴*Id.*

¹¹⁵daData Produced Document (daData Doc. DAT366822).

¹¹⁶Lustigman Feb. 17, 2011 Letter, *supra* note 85, at 4.

daData-related third-party vendors enrolled over 800,000 telephone customers and generated more than \$50 million in revenue.¹¹⁷ As of April 2011, approximately 350,000 telephone customers were being charged by daData-related vendors on a monthly basis.¹¹⁸ Between 2007 and 2010, MySnS-related vendors enrolled 1,201,460 telephone customers and generated \$13 million in revenue.¹¹⁹ Between 2008 and 2010, MORE-related vendors enrolled 316,016 telephone customers and generated over approximately \$26 million in revenue.¹²⁰

The third-party vendors related to these three companies have generated almost \$90 million dollars in revenue over the past few years by placing third-party charges on telephone customers' bills. Most of these charges are likely unauthorized.

VI. Role of Telephone Companies in the Cramming Problem

Telephone companies play an essential role in third-party billing. They act as the gatekeepers to their billing and collection systems, and they distribute the revenue that third-party vendors generate by placing charges on their customers' telephone bills. As discussed in earlier sections of this report, the telephone companies also benefit financially from third-party billing. Because they play this critical role, telephone companies are well aware that third-party billing is harming their customers.

In recent years, telephone companies have made efforts to address the cramming that has been occurring on their customers' bills. They have conducted internal investigations and audits to determine the weaknesses of their third-party billing systems and they have modified their contracts with billing aggregators to address cramming concerns. AT&T has discontinued allowing certain types of services that were causing cramming complaints, including voice-mail services, e-mail services, "Web hosting," and "Internet-based directory assistance."¹²¹ While these steps appear to have successfully decreased unauthorized charges on landline telephone bills, they have not eradicated the problem. As discussed in Part V of this report, Committee staff has found numerous examples of third-party vendors that are likely engaging in cramming and are currently placing charges on telephone customers' bills.

A. Approval Process for Third-Party Vendors

Telephone companies do not contract directly with most third-party vendors. They contract with billing aggregators, which serve as clearinghouses for hundreds of smaller third-party vendors. While they rely on billing aggregators to monitor the business practices of third-party vendors, they retain the final authority to determine whether a third-party vendor should have access to their billing platforms. In order to place charges on telephone customers' bills, third-party vendors must first be approved by the telephone companies.¹²² As discussed above, telephone companies have no legal obligation to let third-party vendors use their billing platforms.

The 1998 Anti-Cramming Best Practices Guidelines suggested that the telephone companies have a screening process in place for new companies wishing to place charges on their customers' telephone bills. The guidelines recommended that:

For the purposes of identifying programs that may be deceptive or misleading or otherwise not in compliance with applicable LEC [local exchange carrier] policies, the LEC should consider requiring a comprehensive product screening and text phrase review/approval process.¹²³

To comply with these guidelines, telephone companies have adopted screening procedures for third-party vendors. They require each third-party vendor to submit basic corporate information, including the vendor's address and telephone number, a description of the services it will provide telephone customers, the names of the

¹¹⁷ daData response to Questions 1(b), 1(j), and 1(k) (Apr. 1, 2011) (daData Doc. DAT158722).

¹¹⁸ *Id.*

¹¹⁹ Letter from Joel Dichter, Counsel to MySnS, to Senator John D. Rockefeller IV (Jan. 19, 2011).

¹²⁰ Letters from Linda Goldstein, Counsel to MORE International, to Erik Jones, Counsel to Senate Commerce Committee (Feb. 3, 2011 and Feb. 10, 2011).

¹²¹ Letter from Timothy P. McKone, AT&T Executive Vice President for Federal Relations, to Senator John D. Rockefeller IV (Mar. 4, 2011).

¹²² AT&T's contracts with billing aggregators have stated, "AT&T may, at its sole discretion, reject any products or services or charges for billing," and that, "prior to submitting billing data to AT&T, Customer must complete a product or services approval process, which shall be determined by AT&T at its sole discretion." Older versions stated it "reserves the right to reject for any or no reason, in its reasonable discretion, the addition of any new Clients." Qwest's contracts stated, "Qwest retains sole discretion on matters relating to which Billing Aggregator's Clients may bill within the Qwest shared bill."

¹²³ Anti-Cramming Best Practices Guidelines (1998) (online at http://transition.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html).

company's officers, and its state of incorporation.¹²⁴ Third-party vendors must also submit websites, marketing materials, and any telemarketing scripts they may use to enroll customers. AT&T's application also specifically requests that third-party vendors disclose any affiliations with other companies that are billing consumers' telephone bills.¹²⁵

As part of the application process, AT&T, Qwest, and Verizon each conduct reviews of third-party vendors. For example, Verizon explained that it, "performs its own review of potential sub-CICs [third-party vendors] prior to permitting them to include charges" and that it "will perform an Internet search of the identified principles . . . to determine if the sub-CIC is affiliated with any sub-CICs with which Verizon has experienced cramming-related issues."¹²⁶ Qwest explained that, "at its discretion, [it] conducts its own, independent investigation regarding the vendor and its program," and that "after a thorough review . . . Qwest decides whether to allow the billing aggregator to bill for the vendor's program."¹²⁷

Financial Pressure to Approve Vendors While this approval and review process has deterred bad actors in some instances, Committee staff has also accumulated many examples showing when it did not. Documents obtained during the investigation showed that billing aggregators routinely submitted applications for questionable third-party vendors to the telephone companies, and that telephone companies often approved these applications, even though there was evidence that the applicants were crammers.

Evidence reviewed by Committee staff shows that telephone company employees understood that third-party billing was a valuable source of revenue for their companies. While allowing third-party vendors to access their telephone bills exposed their customers to cramming, it was also profitable business line for the companies.

In November 2008, for example, a Verizon employee forwarded a cramming complaint to a colleague and stated, "[h]ere is an example where B&C [billings & collections] is causing problems here—why do we let this ESBI—and there have been many complaints on this provider, do business with us?" He asked, "[w]hy can't we just shut this off and let these carriers go elsewhere—i.e., use a credit card for their services and get out of this business?" As the colleague forwarded the e-mail to the Verizon employee who handled complaints he noted, "I did not respond . . . since . . . I'm confident he already understands that B&C is a revenue generating product with excellent margins (ROI) [return on investment] for Verizon."¹²⁸

In July 2006, AT&T employees reviewed a third-party application that Integretel, a billing aggregator, submitted on behalf of a company called NetOpus. During the review process, the company's application raised red flags for an AT&T employee, who noted that, "from a Product perspective, it appears as if this request should be denied."¹²⁹ Despite this recommendation, other AT&T employees considered requiring a "letter of credit to cover any potential financial issues" to satisfy concerns raised about the company.¹³⁰ In response, an AT&T employee stated the following:

Not sure how you can put a dollar amount on something like this??? In case of end-user class action lawsuits, it could be in the millions . . . With or without a letter of credit, I don't have a warm fuzzy . . . Tracy tells me all the time, "your contract says you can deny a subCIC whenever you want, even if the reason is simply that you don't like it." Problem is we have KK [AT&T employee] and PW [AT&T employee] standing in the way of that prerogative. When it's KK and PW taking the message back to the customer, even a denial is never a denial.¹³¹

A Director for AT&T Billing & Collection replied, "I know however we are pushed to bring in revenue and we can't if we deny new customers. The only thing we can do is try to get as much protection as possible and go from there."¹³² Frustrated with this response, the AT&T employee stated:

Hmmm . . . regardless of the level of risk, sounds like we are never denying anything ever again. . . .

¹²⁴ See Exhibit 3, "Example Third-Party Vendor Applications."

¹²⁵ *Id.*

¹²⁶ Letter from Mark J. Montano, Verizon Assistant General Counsel to Erik Jones, Counsel to the Senate Commerce Committee (July 30, 2010).

¹²⁷ Letter from Barbara Van Gelder, Counsel to Qwest, to Senator John D. Rockefeller IV (July 16, 2010).

¹²⁸ See Internal Verizon e-mail (Nov. 26, 2008) (Verizon Doc. VZ 004 229588).

¹²⁹ Internal AT&T e-mail chain (July 20, 2006) (AT&T Doc. CST 2316558–62).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

So in other words, because of the unrealistic revenue goals and the push from “sales” to meet those goals, regardless of protecting the integrity of the bill, and regardless of what the contract says, and regardless of what Tracy has *said* to me on numerous occasions . . . the only thing we REALLY have the power to do is push back enough and hope the subCIC realizes it is futile and goes away on their own.¹³³

Documents show that AT&T eventually approved NetOpus to place charges on its customers’ bills. A few years later, the AT&T employee’s concerns about NetOpus proved to be correct. In 2010, the FTC won a \$38 million judgment against Roy and John Lin, the owners of NetOpus and other interrelated third-party vendors, for engaging in cramming.¹³⁴ AT&T apparently allowed NetOpus to place charges on its customers’ bills until 2010.¹³⁵ In making its ruling against the Lins, the Federal district court called third-party billing a “fraud-friendly practice” and noted that NetOpus was “exactly the same” as other products the Lin brothers sold.¹³⁶

B. Anti-Cramming Safeguards

In responses they provided to the Committee, the telephone companies explained that they have practices in place to protect their customers against cramming. They monitor the number of complaints they receive about specific third-party vendors and offer “bill blocking” for customers who do not want third-party charges on their telephone bills. Telephone companies also reported that they removed third-party vendors from their billing platforms when the companies exceeded certain complaint thresholds. AT&T reported that it stopped approving third-party vendor applications for certain types of services because of high levels of cramming complaints.

While these safeguards protected some telephone customers from cramming, Committee staff found evidence showing that: (1) the procedures do not work properly; and (2) that even when the procedures do work properly, they do not eliminate cramming. Even if they are effectively employed, blocking and other “back end” responses to cramming do not prevent fraudulent billers from gaining access to the companies’ billing systems and harming consumers.

1. Bill Blocking

All eight telephone companies that provided information to the Committee reported that they offer “bill blocking” free of charge to customers who request it. In theory, a customer who requests “bill blocking” will stop third-party charges from appearing on telephone bills. In practice, “bill blocking” often fails to function properly. Documents obtained by the Committee showed that customers who had previously requested “bill blocking” often complained that unauthorized third-party charges continued to appear on their telephone bills.

- An employee for a Virginia shipping company explained to the Virginia State Corporation Commission that, “I have placed cramming blocks on all numbers that I can; cramming blocks have failed.”¹³⁷ This employee had repeatedly sought assistance from Verizon to stop unauthorized charges from appearing on her employers’ telephone bills, yet the problem continued.
- The City of Chicago told Committee staff that it incurs cramming on its landline telephone bills despite its requests for AT&T to block all third-party charges. An AT&T customer service manager e-mailed the city in June 2010 and acknowledged that AT&T’s “[c]ramming protection is not 100 percent guaranteed to catch all third party billing.” He added, “[u]nfortunately, from time to time a third party biller may slip through.”¹³⁸
- In October 2010, a Kansas consumer filed a cramming complaint with the Kansas Attorney General stating: “Also I had a block put on so I would not get 3rd party billings. The 3rd party billings stopped for several months. Then all of a sudden it started again. I asked AT&T what happened and they could not answer me. I feel if AT&T can put the 3rd party billing on my bill then they can

¹³³ *Id.*

¹³⁴ *Federal Trade Commission v. Inc21.com Corp.*, 745 F.Supp.2d 975, 1004 (N.D. Cal. 2010).

¹³⁵ AT&T was not the only telephone company that allowed NetOpus and other related third-party vendors to place charges on telephone customers’ bills.

¹³⁶ *Federal Trade Commission v. Inc21.com Corp.*, 745 F.Supp.2d 975, 982 (N.D. Cal. 2010).

¹³⁷ E-mail to the Virginia State Corporation Commission (Oct. 30, 2009) (Verizon Doc. VZ_009_116214–15).

¹³⁸ E-mail message from AT&T Business Solutions Customer Service Manager to City of Chicago employee (June 10, 2010).

take it off. Also AT&T stated to pay and then try to get a refund. I am not paying a bill that I did not authorize and then hope to get my money back.”¹³⁹

The weaknesses of “bill blocking” are likely attributable to the fact that telephone companies did not have control over the “bill block” process. For example, as of March 2010, it appeared AT&T was forced to rely upon billing aggregators to place bill blocks. In March 2010, an AT&T Area Manager explained to a group of employees that, “ATT does not have a way to block 3rd party billing/cramming charges, however the 3rd party billers themselves can block it.”¹⁴⁰ See Appendix A for multiple examples of businesses and government offices reporting that unauthorized third-party charges continued to appear after requests for “bill blocking” had been made.

Even when “bill blocking” is effective, it is still an imperfect safeguard against cramming. “Bill blocking” is not a default option for telephone customers. Rather, telephone customers have to proactively inform their telephone companies that they would like “bill blocking” to apply to their telephone numbers. Because many telephone customers are not aware that third-party billing is possible, many telephone customers are not aware of “bill blocking” until after they have been victimized by cramming. Consequently, even when “bill blocking” works, it only helps those customers who have already been harmed.

2. Complaint Thresholds

Multiple telephone companies informed the Committee that they use customer complaints to determine whether a third-party vendor is engaged in cramming. According to the telephone companies, if a third-party vendor’s number of cramming complaints reached a certain percentage or amount during a given time period, they would place the third-party vendor on an “action plan.” If the vendor’s complaint levels did not decrease, telephone companies would remove the third-party vendor from their billing platforms.

While telephone companies had some success using this method to ferret out bad actors, it did not adequately protect telephone customers from cramming. Committee staff has investigated dozens of third-party vendors that are likely engaging in cramming and continue to place charges through the telephone companies’ billing platforms.

Committee staff found evidence which explained why “complaint thresholds” repeatedly failed to root out bad actors. As detailed in Part III of this report, crammers use the “hub company” structure and other tactics to make their complaint levels appear as low as possible. An AT&T employee referred to one such practice when a third-party vendor attempted to apply through multiple billing aggregators. The employee stated, “I’m doing some research on the number of complaints under the subCIC Better Business Organization. They’re already established under ESBI and OAN and now they’re requesting to be a subCIC under Integretel. Can you say cramming complaint dilution???”¹⁴¹

A good example of “complaint dilution” can be seen in the actions of daData, one of the hub companies Committee staff investigated. Over 20 third-party vendors related to daData charged telephone customers for identical “electronic fax services.” As discussed in Part V of this report, Committee staff confirmed that daData controlled the technology for this service and most, if not all, of the vendors’ operations. By operating multiple vendors offering the same electronic fax services, the true number of consumers complaining about its practices was not available to telephone companies.

Committee staff obtained documents showing that telephone companies placed some of these third-party vendors on “action plans” to reduce cramming, but failed to terminate them from third-party billing. For example, on September 24, 2010, Transaction Clearing sent identical e-mails to Lee Liatsis, a daData “Managing Consultant,” about cramming complaints related to Fetch Unlimited, MDVM Network, and YCP Network. In each e-mail, Transaction Clearing stated that it “has recently been addressed by AT&T regarding concerns about the rising number of cramming complaints received each month for companies providing E-Fax services and who are relatively new in billing in the AT&T regions.”¹⁴² In response, on October 4, 2010, Mr. Liatsis sent identical letters on behalf of Fetch Unlimited, MDVM Network, and

¹³⁹ Consumer complaint to Kansas Office of the Attorney General (Oct. 13, 2010) (produced to Commerce Committee by daData, Inc. without Bates numbers).

¹⁴⁰ Internal AT&T e-mail (Mar. 10, 2010) (AT&T Doc. CST2534124).

¹⁴¹ Internal AT&T e-mail (Feb. 23, 2007) (AT&T Doc. CST0792211).

¹⁴² E-mails from Transaction Clearing to Lee Liatsis (Sep. 24, 2010) (daData Doc. DAT366843–45).

YCP Network back to Transaction Clearing.¹⁴³ In each letter, he stated, “our efforts should result in a decrease of AT&T complaints over the next ninety days.” These letters were identical to a letter Mr. Liatsis sent in February 2009 on behalf of BLVD Network to BSG, another billing aggregator, about cramming complaints from Verizon customers.¹⁴⁴

daData-Related Third-Party Vendors That Offered “Electronic Fax Service”	
BLVD Network	Rask Network
Comlink Direct	Selected Options
Connection Backup Serv.	SoLo Communications
Fetch Unlimited	Stand Up Solutions
First Rate Voice Services	Total Protection Plus
MDVM Connect	TriVoice International
Meteline Tech	Universal Voice
My Info Guard	USA Voice Mail
Nations 1st Comm,	Voicemail Solutions
Nationwide Assist	VoiceXpress
Network Assurance	WVM Network
NextGen Connect	YCP Network
PBA Serivces	

Telephone companies treated these third-party vendors as separate companies, when, in fact, they were likely part of one common enterprise. If telephone companies had treated the twenty-five companies in the above table as one enterprise, they would have likely taken different actions.

Additionally, the telephone companies never learned about many affected customers because the customers called third-party vendors or billing aggregators directly to dispute the charges on their telephone bills. This fact is not surprising, given that contact information for the companies is placed next to the third-party charges on telephone customers’ bills.¹⁴⁵ For example, during an 8-month period in 2010, over 200,000 telephone customers contacted daData to cancel services and stated that they “did not authorize,” “did not understand,” or “did not remember” enrollment.¹⁴⁶ Over the same time period, telephone companies only forwarded 2,746 cramming complaints to daData.¹⁴⁷

Even if “complaint thresholds” did function properly and identified every third-party engaged in cramming, they would not adequately protect telephone customers from the harm the crammers caused before being caught. When third-party vendors are removed from telephone companies’ billing platforms for cramming, it does not appear that telephone companies contact customers whose bills have been charged by the cramming company, or otherwise make any attempt to reimburse customers who have already been charged. Consequently, even when telephone companies determined that a company was engaged in cramming and removed the company, thousands of impacted customers likely paid unauthorized charges and never knew it.

¹⁴³ Letters from Lee Liatsis to Transaction Clearing (Oct. 4, 2010) (daData Doc. DAT366837–42).

¹⁴⁴ Letter from Lee Liatsis to BSG Clearing Solutions (Feb. 20, 2009) (daData Doc. DAT366853).

¹⁴⁵ See Exhibit 2, “Example Telephone Bills.”

¹⁴⁶ daData document produced in response to a question asking how customer service representatives categorize incoming consumer contacts. (June 22, 2011) (daData Doc. DAT366822).

¹⁴⁷ *Id.*

Streaming Flix Investigation Committee staff identified one instance when AT&T contacted its customers who had been charged by a company it suspected to be engaged in cramming. The customers' responses were overwhelmingly negative toward the company in question, "Streaming Flix," and suggested that many of the customers had not known about the charges before AT&T contacted them. For example, customers stated:

- What in God's name are you writing about? I have no idea what this service is and do not want it. Please cancel this "order" I do not want it. More importantly I have no idea what it is.
- I do not recall this order. Please call me at the number below to further explain these charges.
- No I did not authorize this charge and I want it off of my bill. Thank you for letting me know.
- I have no recollection of authorizing this charge and want it immediately discontinued from our bill.
- Please remove this immediately, I do not use extra services and can't afford the extra costs. I do not remember signing up.¹⁴⁸

As an AT&T employee was tabulating results of responses, she noted that, "I have sent all 100 e-mails to the customers . . . [t]o date . . . 12 said they did not order Streaming Flix . . . of these 12, none of them have called us to make a cramming complaint."¹⁴⁹ Every AT&T customer that eventually responded informed AT&T that they did not order Streaming Flix.

3. Service Prohibitions

In 2009, AT&T announced that it had been reviewing "its policies and processes related to cramming, in an effort to identify changes that seem likely to reduce the number of cramming complaints."¹⁵⁰ Based upon this evaluation, AT&T "found that voice mail (or voice messaging) and Web hosting have generated a disproportionately large number of cramming complaints."¹⁵¹ In response, it announced it was taking two steps: (1) it would no longer approve applications for third-party vendors that offered voice mail/messaging or Web hosting; and (2) for those third-party vendors previously approved, they could not enroll new telephone customers in their services.¹⁵²

Given that companies offering these services were likely engaged in cramming, AT&T's actions very likely curbed cramming on its customers' telephone bills. However, evidence obtained by Committee staff suggests that these actions, although a step in the right direction, will not be enough to stop cramming. Telephone customers previously enrolled in these services apparently continue to be billed. Further, many companies that engaged in voice mail or Web hosting have already transitioned to other "services" that AT&T has yet to ban.

As an example, BLVD Network, a daData-related company, had previously offered voice mail services at www.myblvdnetwork.com. It now offers "electronic fax service" at www.myblvdnetworkfax.com. Committee staff is aware of multiple examples of other third-party vendors that made similar "transitions."

¹⁴⁸ Internal AT&T spreadsheet documenting responses received in response to communications sent to 100 customers enrolled in Streaming Flix (AT&T Doc. CST2379976–87).

¹⁴⁹ Internal AT&T e-mail (July 20, 2010) (AT&T Doc. CST2379960).

¹⁵⁰ Letter from AT&T to All AT&T Billing Solutions Customers (Oct. 29, 2009) (AT&T Doc. CST009379).

¹⁵¹ *Id.*

¹⁵² *Id.*



C. Awareness of the Problem

Documents obtained by the Committee show that telephone companies are aware that third-party billing leads to significant amounts of cramming. Telephone company employees have repeatedly questioned why the companies are engaged in third-party billing and the companies' customers have complained directly to them about cramming for years. In 2009 and 2010, the companies each took a closer look at their billing practices in an attempt to bring cramming under control.

In the early 2000s, BellSouth, a company that is now part of AT&T, had already noticed that cramming was resurging, even though it had taken steps to address cramming in the late 1990s. A slide deck titled, "Cramming Flares Up Again," explained what BellSouth was experiencing at the time. Just a few years after the company had instituted its first voluntary guidelines to address cramming, it was forced to take another look at the issue. Documents showed that the company again made some progress combatting unauthorized charges, only to have the problem "resurge" again a few years later.

BELLSOUTH **Cramming Flares Up Again**

- Cramming, which had been almost eliminated in the Consumer market by 2000, resurged in 2002.
- This time, however, the charges being crammed were generally more expensive (\$30 - \$50) and were being included on the bills of Small Business customers.
- BellSouth's Small Business customers are reporting 3000 – 5000 instances of cramming each month. This is not an accurate reflection of the total cramming problem, however:
 - These counts do not include those customers who contact the service provider directly.
 - In the Small Business environment, many times customer's report that charges are "unauthorized" when, in fact, they were not authorized by the proper authority.
 - Many of these are duplicate reports if the service provider doesn't act quickly enough to suppress the following months billing.

In 2009, AT&T undertook a "3rd Party Billing Project" to "hold vendors accountable for AT&T's time and costs spent in satisfying . . . 3rd party billing inquiries/allegations."¹⁵³ At the time, AT&T estimated that "[h]andling 3rd Party Billing costs . . . over \$8M per year" in employee time, even though AT&T had entered into "without inquiry" contracts with most billing aggregators.¹⁵⁴ "Without inquiry" contracts stipulated that "customers who call AT&T are first referred to the 3rd Party for problem resolution."¹⁵⁵ Because the number of calls AT&T received about

¹⁵³ AT&T, 3rd Party Billing Project (June 29, 2009) (AT&T Doc. CST2511540–53).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

third-party billing was so voluminous, AT&T evaluated its “time and costs handling 3rd party inquiries ‘without inquiry.’” Even “without inquiry” calls were costing AT&T a significant amount of money.

Internal e-mail communications between AT&T employees also showed that the company was aware that cramming was a major problem.

- An employee noted in July 2009 that, “although third-party billing complaints were down for the month (–17 percent), they again were the top wireline issue for the month.”¹⁵⁶
- A couple months later, in response to a complaint, a senior executive in AT&T’s Washington office stated, “I thought we’d ended this practice—what are we doing? And do we want to invite an FCC rule?”¹⁵⁷
- Another AT&T employee noted that, “It seems like we are handling a lot of Service calls for situations that are not related to our services.”¹⁵⁸ In response, an employee from AT&T customer service department stated, “This is definitely an area where we can reduce costs and improve customer perception of AT&T.”¹⁵⁹ He explained that, “wholesale benefits from getting the revenue while we [customer service] bear most of the expense—so there’s not a strong financial link to make sure the right controls are in place.”¹⁶⁰
- A month later, in response to a cramming complaint, another AT&T employee noted, “[w]e’re having a resurgence in 3pb [third-party billing] complaints.”¹⁶¹

As AT&T was determining ways to decrease the amount of time its employees spent answering calls related to third-party billing, AT&T’s outside counsel reported to the FCC that it experienced “low rates of complaints” for cramming.¹⁶² The companies’ outside counsel went as far as reporting that “the current data could very well overstate the actual incidence of cramming.”¹⁶³

In 2009 and 2010, Verizon employees also expressed concern about cramming and third-party billing.

- In October 2008, a Verizon employee explained that “[a]lot of time is spent on Regulatory issues.” She stated, “There are cramming complaints *i.e.*, customer complaints re fraud, being billed for things they didn’t do, which often escalate to Ivan’s desk, PUC Complaints or lawsuits.”¹⁶⁴
- In January 2009, a Verizon employee asked, “[w]hat are these charges?” and “[w]hy do third party charges get on our customer’s bills?”¹⁶⁵ He explained, “[w]e are seeing a lot of calls into our centers for the same reasons . . .”¹⁶⁶
- In February 2010, a Verizon Service Mentor stated in an e-mail that, “[m]yself and several reps have noticed a significant increase in calls related to cramming charges.”¹⁶⁷ He wrote: “My question/concern is, what is being or can be done about this . . . this is killing our access and time on the phones. Are these companies actually being ‘investigated’ to see why they are able to keep billing our customers? It seems [to] be the same companies every time. From a legal standpoint, can Verizon do anything to stop these companies that continue to bill our customers over and over. I guarantee you if someone pulls the cramming log you will see USBI, OAN, and other companies similar to those.” In response, another Verizon employee stated, “Thanks . . . we terminate anyone who does that and we’re able to prove it. I think the problem is many instances are not reported.”¹⁶⁸

D. Response to Customers

Documents obtained through the investigation showed that the telephone companies’ employees often did not follow the companies’ written procedures for resolving customers’ cramming complaints. Customers seeking assistance have frequently been told by telephone company employees that there is nothing they can do to help,

¹⁵⁶ Internal AT&T e-mail (July 13, 2009) (AT&T Doc. CST0184626).

¹⁵⁷ Internal AT&T e-mail (Nov. 5, 2009) (AT&T Doc. CST2476031).

¹⁵⁸ Internal AT&T e-mail (Nov. 1, 2009) (AT&T Doc. CST0269209–10).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Internal AT&T e-mail (Dec. 11, 2009) (AT&T Doc. CST2470073).

¹⁶² Comments of AT&T Inc., Federal Communications Commission, CC Docket No. 98–170 (Oct. 13, 2009).

¹⁶³ *Id.*

¹⁶⁴ Internal Verizon e-mail (Oct. 2, 2008) (Verizon Doc. VZ_007_003542–43).

¹⁶⁵ Internal Verizon e-mail (Jan. 13, 2009) (Verizon Doc. VZ_004_229580).

¹⁶⁶ *Id.*

¹⁶⁷ Internal Verizon e-mail (Feb. 19, 2010) (Verizon Doc. VZ_004_133605).

¹⁶⁸ *Id.*

and that telephone companies were legally obligated to place the charges on their bills. Both assertions are incorrect.

1. Customer Assistance

Committee staff reviewed thousands of cramming complaints that residential and business customers submitted to the BBB, FTC, FCC, state attorneys general, and their telephone companies. These complaints showed that telephone companies repeatedly informed customers that there was nothing they could do to resolve the unauthorized charges appearing on their telephone bills.¹⁶⁹ Hundreds of complaints reviewed by Committee staff contradicted what telephone companies informed the Committee about their policies. Examples included:

- A Qwest customer stated, “I called Qwest twice but they would only refer me to ILD [a billing aggregator] to resolve the problem,”¹⁷⁰ while Qwest informed the Committee that it “does not refer the customer to the billing aggregator or vendor for resolution of the dispute. Qwest resolves the dispute directly.”¹⁷¹
- A Verizon customer stated in a complaint that, “she has been told by over 8 different people from the Verizon Business Office that since this is a 3rd party billing issue Verizon cannot assist her,”¹⁷² while Verizon informed the Committee that “Verizon does not require the customer to contact the sub-CIC that initiated the charge prior to removing the charges.”¹⁷³
- In an online chat with an AT&T customer service representative, an AT&T customer asked, “how can I prevent this [unauthorized charges] from happening” and the AT&T employee responded, “We have no way to prevent the problem from happening.”¹⁷⁴

See Appendix A for additional examples of consumers and businesses complaining about their telephone companies’ inadequate responses to the unauthorized charges appearing on their telephone bills.

2. No Legal Obligation

Complaints also showed that telephone company employees repeatedly misinformed customers about the telephone companies’ role in third-party billing. Although documents showed instances in which the telephone companies appear to have instructed their employees that they voluntarily engage in third-party billing,¹⁷⁵ employees for the telephone companies repeatedly informed customers that the telephone companies were legally obligated to place the charges on their bills. These statements were inaccurate and confused telephone customers about the nature of the problem.

Committee staff reviewed many complaints where telephone company employees made incorrect statements about third-party billing, suggesting that, at one time, they were trained to inform customers of this “legal obligation.” Examples included:

- In December 2008, a Verizon employee informed a Constituent Services Specialist in the Office of U.S. Representative Chris Van Hollen that, “[w]e are required by law to open our billing system to other companies,” in response to his e-mail about a constituent with a cramming complaint.¹⁷⁶ After he informed her that the constituent was “pretty fired up about it,” she responded, “I’m not sure what there would be to do about it—it’s in the Federal Communications Act . . . cramming is NOT as big an issues as it was years ago.”¹⁷⁷
- In February 2009, an AT&T employee stated that is “not allowed to reject third-party charges billed by third parties that offer telecommunications and related services. Local exchange carriers are prohibited from refusing to include the

¹⁶⁹ Committee staff is not suggesting that telephone companies informed every customer that there was nothing the company could do to resolve the unauthorized charges appearing on their bills. Rather, Committee staff has reviewed enough complaints where employees stated there was nothing they could do to know that it happened with some frequency.

¹⁷⁰ Consumer Complaint to Oregon PUC (Mar. 2, 2009) (Qwest Doc. QSC0014058).

¹⁷¹ Letter from Barbara Van Gelder, Counsel to Qwest, to Senator John D. Rockefeller IV (July 16, 2010).

¹⁷² Consumer Complaint to Verizon (Dec. 3, 2009) (Verizon Doc. VZ_003_001869).

¹⁷³ Letter from Mark J. Montano, Verizon Assistant General Counsel to Erik Jones, Counsel to the Senate Commerce Committee (July 30, 2010).

¹⁷⁴ Consumer Complaint to Better Business Bureau of Connecticut (Aug. 21, 2009) (AT&T Doc. CST009842).

¹⁷⁵ AT&T has informed its employees that they “should not inform customers that AT&T is required to provide billing and collection services to unaffiliated service providers.” (AT&T Doc. CST010281).

¹⁷⁶ Verizon e-mail (Dec. 30, 2008) (Verizon Doc. VZ_004_211426).

¹⁷⁷ Verizon e-mail (Jan. 7, 2009) (Verizon Doc. VZ_004_211425).

charges in the customer's local bill and cannot question the validity of the charges.”¹⁷⁸

- In October 2009, a Verizon customer stated, “When I spoke to Verizon, they told [me] that an FCC regulation mandates that they bill me on behalf any third party request.”¹⁷⁹
- In August 2010, a Qwest employee stated, “Qwest and other local exchange carriers (LEC) have an obligation to provide billing and collection services to third parties, when requested, under the same terms and conditions.”¹⁸⁰

See Appendix A, “Cramming Case Studies,” for additional examples of telephone companies misinforming telephone customers about their legal obligation to place third-party charges on their customers’ telephone bills.

E. Recent Responses to the Cramming Problem

AT&T and Verizon have each informed the Committee that they have taken steps in recent months to further strengthen their anti-cramming safeguards. In March 2011, AT&T informed the Committee that it had made “several significant enhancements” to its third-party billing program. These enhancements included: “minimum ‘baseline’ verification requirements that will apply to all transactions;” “heightened verification requirements for Internet-based transactions;” and additional requirements for billing aggregators.¹⁸¹

In April 2011, Verizon informed the Committee that it was taking three steps to strengthen its anti-cramming safeguards: prohibiting third-party vendors from using “open affiliate networks” to market their services; revising its agreements so that third-party vendors rejected or terminated by other telephone companies are automatically precluded from billing on Verizon’s platform; and notifying new customers, in welcome letters, that “bill blocking” is available.¹⁸²

VII. Conclusion

Although some legitimate companies use third-party billing on landline telephone bills, it has largely failed to become a reliable method of commerce. Instead of “creating conveniences” for telephone customers, as telephone companies promised it would, third-party billing has made telephone customers targets for fraud. Despite the telephone companies’ decision to enact voluntary anti-cramming guidelines and the FCC’s “Truth-in-Billing” requirements, it still takes minimal effort for a company engaged in cramming to place unauthorized third-party charges on consumers’ bills, while it remains difficult for customers to find and remove those charges from their telephone bills. As a result, unless additional protections are put in place, millions of telephone customers will likely continue to face billions of dollars of unauthorized charges.

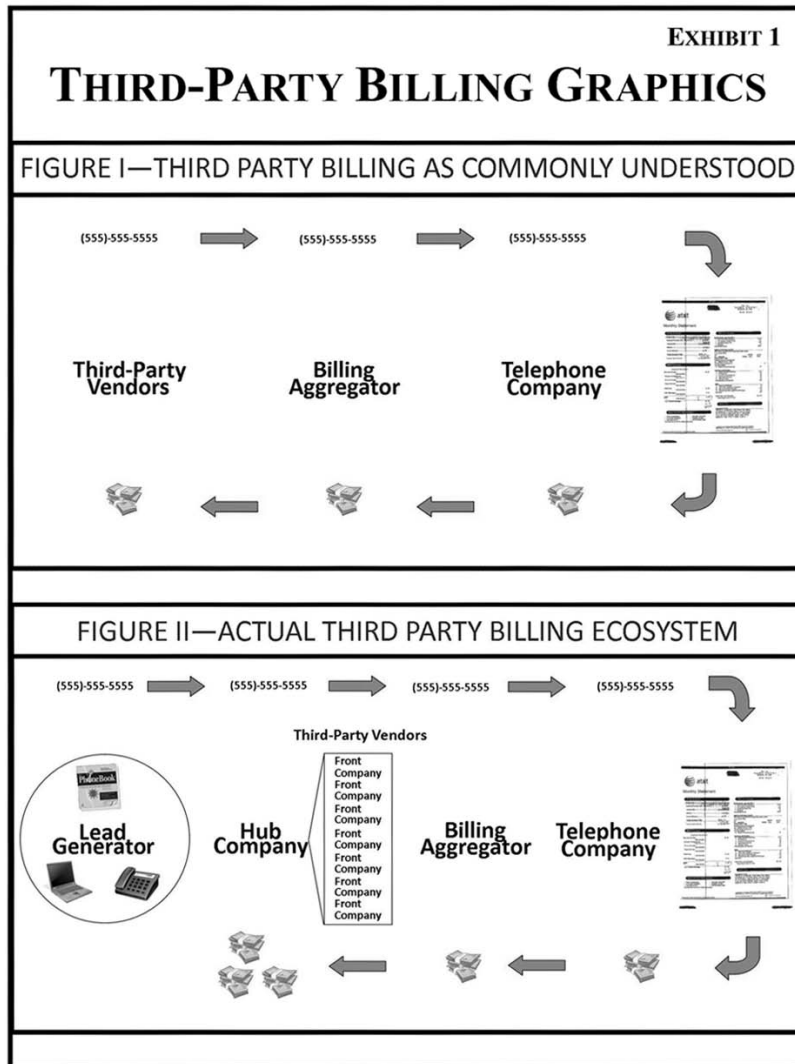
¹⁷⁸ Better Business Bureau, Complaint Activity Report, Case No. 27071953 (Feb. 3, 2009) (AT&T Doc. CST009649).

¹⁷⁹ Consumer Complaint to Verizon (Dec. 3, 2009) (Verizon Doc. VZ_003_001954).

¹⁸⁰ Qwest Internal e-mail (Aug. 2, 2010) (Qwest Doc. QSC0015630).

¹⁸¹ Letter from Timothy P. McKone, AT&T Executive Vice President for Federal Relations, to Senator John D. Rockefeller IV (Mar. 4, 2011).

¹⁸² Verizon document, *Summary of Actions Taken/Planned by Verizon To Strengthen Anti-Cramming Protections* (Apr. 19, 2011).




SAMPLE RESIDENTIAL TELEPHONE BILL

EXHIBIT 2

att.com

Page 1 of 4
Account Number [REDACTED]
Billing Date APR 8, 2009
Web Site att.com

 **at&t**

Monthly Statement

Bill-At-A-Glance

Previous Bill [REDACTED]
Payment Received [REDACTED]
Adjustments [REDACTED]
Balance [REDACTED]
Current Charges [REDACTED]
Total Amount Due \$79.71
Amount Due in Full By April 29, 2009 with 1% discount

Plans and Services

Monthly Service - Apr 1 thru May 1

1. Basic Local Service-Residence	16.00
2. Call Forward-Busy/Don't Answer	1.00
3. InLine@Plan Repair Plan	7.00
4. TouchTone	.10
Total Monthly Service	25.10

Additions and Charges to Service
This section of your bill reflects charges and credits resulting from account activity.

Item No.	Description	Quantity	Monthly Rate	Amount Billed
Activity as Apr 1, 2009	(Monthly Charges are Presented from Apr 1, 2009 through Apr 2, 2009) Your bill reflects a rate increase from \$0.50 to \$0.55 for:			
6.	Federal Universal Service Fee	1		.01

Surcharges and Other Fees

8.	Federal Subscriber Line Charge			9.51
7.	911 Service Fee			.00
6.	Federal Universal Service Fee			.00
8.	Texas Universal Service			.00
10.	Municipal Charge			1.37
Total Surcharges and Other Fees				10.88

Taxes

11.	Federal (Local Charges)			.35
12.	Federal (Non-regulated & Toll Charges)			.00
13.	State and Local (Local Charges)			2.10
14.	State and Local (Non-regulated & Toll Charges)			.20
Total Taxes				2.65

Total Plans and Services **36.01**
Amount Subject to Sales Tax: 25.46

AT&T Corp.

News You Can Use Summary

- PREVENT DISCONNECT
- ELECTRONIC PAYMENTS
- UNIVERSAL SVC FEE
- LONG DIST. PROVIDERS
- PAYMENT OPTIONS
- AT&T UNIVERSAL CARD

See "News You Can Use" for additional information

Important Information
Thank you for choosing AT&T. If you believe that a carrier has switched you, or included charges on your bill without your authorization, please contact AT&T at 1-800-222-9999. If you need further assistance, contact: Public Utility Commission of Texas, Office of Customer Protection.

Local Services provided by AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, or AT&T Texas based upon the service address location.
U.S. Pat. D419, 999 and D414, 958 Printed on Recycled Paper


Subscriptions portion with your check in the enclosed envelope.

CONFIDENTIAL

MORE INTL 01854

SAMPLE RESIDENTIAL TELEPHONE BILL

EXHIBIT 2



Page 3 of 4
Account Number [REDACTED]
Billing Date Apr. 3, 2000

News You Can Use

PAYMENT OPTIONS
Pay bills online FREE of charge at att.com. Go There Today! You can also pay by calling 1.800.361.3000 and saying "Pay Bill". Payments made with an AT&T representative may be subject to a \$5.00 payment convenience fee. You can mail your payment in the enclosed envelope.

UNIVERSAL SVC FEE
Effective 4/1/2000, the Federal Universal Service Fee has increased. This fee supports telecommunication needs of low-income households, consumers living in high-cost areas, schools, libraries and rural hospitals. Your current bill reflects the change. For more information, please contact an AT&T Service Representative at the phone number listed on the front of your bill. Thank you for choosing AT&T.

AT&T UNIVERSAL CARD
SAVE UP TO 10% ON YOUR AT&T SERVICES with AT&T Universal Savings Card for the first 12 months and up to 5% savings thereafter. Save even more with low APR on balance transfers and NO annual fee. Restrictions apply. Call 1.800.361.3000 for details.

Terms and Conditions

CUSTOMER QUESTIONS
For more contact the Public Utility Commission of Texas, Office of Consumer Protection, P.O. Box 1326, Austin, TX 78711-0326.
Toll-free at 1.800.361.3000. If you believe the local office is unable to resolve your problem, please contact the toll-free number at 1.800.361.3000. If you are not satisfied with the outcome, please contact the toll-free number at 1.800.361.3000. If you are not satisfied with the outcome, please contact the toll-free number at 1.800.361.3000. If you are not satisfied with the outcome, please contact the toll-free number at 1.800.361.3000.

FOR A COMPLETE SETTING OF TERMS AND CONDITIONS, PLEASE REFER TO:
- The back of the AT&T Yellow Payee Directory, or
- Visit us on the web at att.com

HOW TO CONTACT US
For all showing or requesting return of bill, please contact us at att.com, call the number listed on your bill, or send us a letter to AT&T Customer Service, P.O. Box 1046, Austin, TX 78711-0466. We reserve the right to modify or discontinue service without notice. We are not responsible for any loss or damage to your bill should be mailed to: AT&T Customer Service, P.O. Box 1046, Austin, TX 78711-0466.

CONFIDENTIAL

MORE INTL 01852

SAMPLE RESIDENTIAL TELEPHONE BILL

EXHIBIT 2

USBI [REDACTED]

Page 1 of 4
 Account Number [REDACTED]
 Billing Date Apr 3, 2009
 Questions? 1 888 480-8724

Important Information

— This portion of your bill is provided as a service to the company identified above. Please review all charges appearing in this section. If you have any questions or concerns, call the telephone number shown above.

Current Charges

Billed on Behalf of UNIVERSAL CALL PLAN, INC. # [REDACTED]
 Attached Charges and Credits

No.	Date	Description	Amount
1	3-27	UNIVERSAL CALL PLAN, INC. (DLTD. LB. RTR F)	19.95

Taxes

2	Federal	.00
3	State and Local	.00
Total Taxes		.00

Minutes provided and billed
Total USBI 19.95

3008 001 00000 1 00 00 000000 00000000 00000000 00000000 00000000

CONFIDENTIAL

MORE INTL 0185

SAMPLE VERIZON THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

CONFIDENTIAL - NOT FOR PUBLIC DISCLOSURE

<div style="text-align: center;"> VERIZON Finance Billing Services </div> <div style="text-align: center;"> FORM TO ADD/CHANGE OR DELETE EMI 41/42 – 01-01-18 TEXT PHRASE </div> <p>Attach this form to your request to add and/or change text phrases. A separate form must be completed for each SubCIC, program, service, or product request. This form may not be altered in any way and must be properly completed for your request to be processed. Consideration of any request, which is not complete or not accompanied by the required marketing materials as indicated on this form, will be delayed until all required information is received. Verizon will review the submitted materials and notify you if changes and/or additions are required. All requests and backup documentation must adhere to Verizon Finance Billing Services (Verizon) billing policies and procedures. Please review the approved and prohibited services/products/programs as listed in the Verizon Billing User Guide, Section 4, pages 2-3, prior to issuance of your request.</p> <p>PLEASE NOTE (1): The list of approved and prohibited services is not intended to be a complete listing. Verizon reserves the right, in its sole discretion, to not bill for any service/program/product that Verizon determines to be misleading, cause confusion to the End-User, or harm the image and/or reputation of Verizon.</p> <p>PLEASE NOTE (2): Verizon will NOT bill for services/programs/products that include free trial offers and require an affirmative cancellation of services during the trial period to prevent monthly charges and implementation charges from being incurred.</p> <p>Services/programs/products offered on a free trial basis MUST be billed with 30 days of service provisioning. In order to fulfill a free trial offering, a credit to offset the monthly charge MUST be submitted within the free trial period.</p> <p>This document must be received by Verizon Billing Services (Verizon) by Noon EST on the 1st business day of the month prior to the requested implementation month in order to assure timely processing of any additions or changes.</p> <p>TO BE COMPLETED BY CARRIER/CLEARINGHOUSE REPRESENTATIVE</p> <p>I. GENERAL INFORMATION</p> <p>Carrier Name: <u>USBI</u></p> <p>Carrier Identification Code (CIC): <u>556</u></p> <p>Access Customer Name Abbreviation (ACNA): <u>USB</u></p> <p>Prepared on (date): <u>3/18/08</u></p> <p>Prepared by (name): _____ Phone #: <u>210</u></p> <p>Email Address: _____@bscclearing.com Fax #: <u>210</u></p> <p>II. TEXT PHRASE VERBIAGE INFORMATION</p> <p>The text phrase MUST clearly and accurately describe the specific program and/or charge to be billed. More than one text phrase may be requested on this form as long as the phrases apply to the same SubCIC, program, and/or product. A letter, symbol or space represents one character in the text phrase.</p> <p>Revised August 2004 Page 1</p>
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VZ_004_010974

VERIZON
Finance Billing Services

PLEASE NOTE THE FOLLOWING FOR SENDING 42-50-01 RECORDS:

Non-Invoice Billing

- Effective October 25, 2000, Verizon began accepting a newly defined Exchange Message Interface (EMI) 020A module for use with non-invoice billing.
- The 020A module can be used at both the primary Carrier Identification Code (CIC) and the SubCIC levels.
- The 020A module is to be sent on each EMI 425001 Customer Charge Summary Non-Detail record that is being used to bill a product or service that was not billed to the end user, by the specific service provider, during the service provider's last billing cycle.
- Receipt of the 020A module will cause the following bill phrase to be printed on the end user's bill page: NOTICE: THIS IS A NEW SERVICE PROVIDER THIS MONTH
- The new service provider bill phrase will be printed one time, regardless of the number of 020A modules sent for the specific CIC or SubCIC

Invoice Billing Customers are required to comply with the new service provider rules as well.

III. TEXT PHRASE INFORMATION

1. DESCRIBE - IN DETAIL - THE EXACT PRODUCT/SERVICE BEING SOLD.
Unlimited long distance service
2. TO WHOM WILL THIS PRODUCT/SERVICE BE MARKETED?
☐ Business ☐ Residential ☒ Both Business and Residential
3. TRAFFIC TYPE:
☐ Universal Service Fund (USF) ☐ Pre-subscribed Line Charge (PICC)
☒ Specialized Service (Specify Product): see #1
4. HOW ARE THE CHARGES TO BE PRESENTED ON BILL?
☐ Per Transaction (i.e., per call)
☐ One-Time Charge (i.e., setup, installation)
☒ Summary/Service Fee (i.e., per month) Recurring? ☒ Yes ☐ No
5. CHECK EACH METHOD THAT WILL BE USED TO MARKET THE PRODUCT OR SERVICE:
☐ Direct Mail/Postcard Include a copy of all direct-mail marketing materials.
☒ Internet Site Include the Internet address and a printout of all Internet pages associated with the product.
Include a copy of the advertisement(s) and names of all

VERIZON	
Finance Billing Services	
<input type="checkbox"/> Magazine/Newspaper Ad	publications with the dates the ad(s) will appear.
<input type="checkbox"/> Radio Ad	Include a tape and/or script of the advertisement.
<input type="checkbox"/> Store Sale	Include a copy of the order form that the customer signs and a copy of the script the sales person uses.
<input type="checkbox"/> Inbound Telemarketing	Include a copy of the telemarketing script and verification script that is used on the call
<input type="checkbox"/> Outbound Telemarketing	Include a copy of the telemarketing script and verification script that is used on the call.
<input type="checkbox"/> Television Ad	Include a video copy of the advertisement.
<input type="checkbox"/> Other (Please explain) _____	
ALL MATERIAL THAT WILL BE USED TO MARKET THE PRODUCT OR SERVICE MUST:	
Minimum documentation required:	
Sales and verification scripts, signed Letter of Authorization (if applicable), all backup documentation (i.e. - video copy, advertisement (paper,radio,tv,video) and welcome package	
For internet purchased services/products/programs ;	
Please provide printouts or links to ALL web pages involved in the signup process. These should include at the very least: sales page, terms and conditions page, electronic letter of authorization page, page reconfirming what the end-user has ordered, final confirmation page, and welcome page that is emailed to the end-user and/or the welcome packet that is mailed to the end-user.	
Sales and verification scripts MUST contain the following verbiage:	
Are you 18 years of age and duly authorized by the telephone account owner to make changes to and/or incur charges on the telephone account?	
Inform the end-user of any and all charges for the product or service in sales script, verification script, and the welcome package.	
Inform the end-user if these charges are a one-time charge or monthly recurring charges.	
Inform the end-user clearly the length of the agreement, specific limitations, specific rules governing the agreement, term of the agreement and how the end-user can contact your company to request an end to the agreement in the sales script, verification script and the welcome package.	
Inform the end-user that these charges will appear on their local telephone bill in the sales script, verification script and the welcome package information.	
Inform the end-user of the underlying carrier and whether there is a PICC change involved in this transaction.	
Revised August 2004	Page 4

<p style="text-align: center;">VERIZON</p> <p style="text-align: center;">Finance Billing Services</p> <p>• IF there is a possible PICC change involved in this transaction, the following text must be in the sales and verification scripts – "local telephone company may charge up to \$5.00 for the PICC change."</p> <p>Inform the end-user in detail of how to cancel the product or service in the sales script, verification script and the welcome information.</p> <p>Inform the end-user if cancellation will incur charges or not incur charges in the sales script, verification script and the welcome information.</p> <p>Verizon reserves the right to require additional documentation as we deem necessary on a case to case basis.</p> <p>6. HOW DOES THE END-USER REQUEST OR ORDER THE PRODUCT OR SERVICE?</p> <p>_____</p> <p>(Attach all applicable documentation.)</p> <p>The ordering process MUST contain the verbiage as indicated in #5 above to ensure that the person is authorized to order this product/service.</p> <p>7. HOW IS END-USER'S REQUEST OR ORDER VALIDATED?</p> <p>One of the following is required:</p> <p><input checked="" type="checkbox"/> Electronic LOA</p> <p><input type="checkbox"/> Signed document (LOA)</p> <p><input type="checkbox"/> Voice capture of the entire conversation, if telemarketer both makes and verifies the sale</p> <p><input type="checkbox"/> Voice-capture of just the verification, if supervisor or another department verifies the sale</p> <p><input type="checkbox"/> Third party verification (Include name, address, and telephone number of company doing verification)</p> <p>_____</p> <p>N/A</p> <p>_____</p> <p>(Company Name, Address, Telephone Number)</p> <p>ATTACH ALL APPLICABLE DOCUMENTATION. THE VALIDATION PROCESS MUST:</p> <p>Ensure that the person ordering the product or service is authorized to order this product or service by containing the verbiage indicated in #5 above.</p> <p>Inform the end-user of any and all charges for the product or service.</p> <p>Inform the end-user if these charges are a one-time charge or are monthly recurring charges.</p> <p>Inform the end-user that these charges will appear on their local telephone bill.</p> <p>Inform the end-user of how to cancel the product or service.</p> <p>Revised August 2004 Page 5</p>

SAMPLE VERIZON THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

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VERIZON	
Finance Billing Services	
8. IS A PIC CHANGE REQUIRED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
IF YES, ALL MARKETING MATERIALS AND DOCUMENTATION MUST:	
Identify the underlying carrier.	
Clearly explain to the End-User that a PIC change is involved.	
Explain that there is a charge involved in changing the PIC.	
9. FOR DIAL UP SERVICES ONLY - HOW DOES THE END-USER ACCESS THIS SERVICE?	
(pots number, 800 number, 900/700 number, etc.)	
10. WHAT ARE THE EXACT CHARGES FOR THIS SERVICE?	19.99
11. HOW ARE THESE CHARGES DISCLOSED TO THE END USER?	DURING THE MARKETING OF THE SERVICE
12. WHAT TYPE OF POST-SALE FULFILLMENT DOCUMENT DOES THE END-USER RECEIVE?	END USER RECEIVED A WELCOME FULFILLMENT DOCUMENT
ATTACH ALL APPLICABLE DOCUMENTATION - THE DOCUMENTATION MUST:	
Inform the end-user of any and all charges for the product or service.	
Inform the end-user if these charges are a one-time charge or are monthly recurring charges.	
Inform the end-user that these charges are going to appear on their local phone bill.	
Inform the end-user of how to cancel the product or service.	
13. PRODUCT STATUS:	
<input checked="" type="checkbox"/>	New product, never been marketed or billed
<input type="checkbox"/>	New product, currently marketed but never billed
<input type="checkbox"/>	Existing product, currently marketed and billed
<input type="checkbox"/>	Grandfathered product, no longer marketed, currently billing
IF PRODUCT IS CURRENTLY BEING BILLED, EXPLAIN THE BILLING METHOD AND BILLING PROVIDER. ALSO, EXPLAIN HOW END USERS WILL BE NOTIFIED OF THE CHANGE IN BILLING METHOD.	
14. IS PRODUCT TARRIFFED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
If yes, list states where product is tarified. _____	
15. CUSTOMER SERVICE MANAGER NAME:	
Revised August 2004	Page 6

VZ_004_010979

SAMPLE VERIZON THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

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VERIZON Finance Billing Services	
Direct Dial Number: _____	
Hours of Operation: <u>8</u> A.M. to <u>6</u> P.M. <u>Mon</u> thru: <u>Fri</u>	
How are after-hours calls handled?	
<input type="checkbox"/> Answering service with message and call back next business day <input checked="" type="checkbox"/> Answering machine/voicemail and call back next business day <input type="checkbox"/> Other (please explain) _____	
16. OUT-SOURCED INQUIRY (if applicable):	
Inquiry Company Name: _____	
Inquiry Company Address: _____	
Inquiry Phone Number: _____	
Inquiry Contact Name: _____	Phone Number: _____
Years in Business: _____	Years at Location: _____
17. COMMENTS OR ADDITIONAL INFORMATION: _____	
VERIZON RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REFUSE TO BILL FOR ANY PROGRAM THAT MAY BE MISLEADING, CAUSE CONFUSION, OR HARM THE IMAGE AND REPUTATION OF VERIZON.	
The approval of this text phrase is solely, strictly, exclusively for the product(s) and/or service(s) detailed above. Any changes made to this product and/or service, and not submitted to Verizon for approval, will result in immediate deletion of the text phrases established for this product and/or service. Changes include, but are not limited to, the marketing methods, marketing materials, the amount billed, and/or changes to the marketing or verification process.	
I hereby certify that the product or service described in this application is exactly as marketed and sold. I agree to notify Verizon, in writing, of any changes or additions to this product or service at least thirty (30) days prior to marketing. I also understand that no marketing of products or services will commence prior to approval by Verizon.	
Signature _____ Title: <u>LEC Relations Specialist</u>	Name (Printed) _____ Date: <u>3/18/08</u>
Revised August 2004 Page 7	

VZ_004_010980

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

Date: 12-13-07

Qwest Corp.

Re: New ETS Program for: Green Tree Data
Sub-CIC: 0049

Qwest,

Transaction Clearing has been presented with a new billing opportunity for Green Tree Data that is targeted to residential for Unlimited Long Distance and Unified Voice Messaging. A complete calling solutions package offering unlimited voice messaging. This merchant offers Unlimited Long Distance and Unified Voice Messaging service at a price point of a monthly payment of 12.95 and a one time set-up fee of \$14.95.

The subscriber learns of this merchant's service through Internet. Upon agreement to accept the service through Internet sales, the subscriber will receive a verification confirmation page to accept. The subscriber will receive a welcome package within 5 business days from initial sign up which includes a Welcome Letter with the company's address, toll free phone number, pricing, website information, how the service will look on the LEC bill and an Activation Letter with their account ID information.

The text phrase(s) and price points to be submitted for this merchant are as follows:

<u>Text Phrase #1</u>	<u>Charge Amount #1</u>
GREENTREE DATA VM& LD MNTHLY FEE	\$12.95
<u>Text Phrase #2</u>	<u>Charge Amount #2</u>
GREENTREEDATA SETUP FEE	\$14.95
<u>Text Phrase #3</u>	<u>Credit Amount #1</u>
CREDIT MONTHLY FEE	open
<u>Text Phrase #4</u>	<u>Credit Amount #2</u>
CREDIT SET UP FEE	open

All materials, including service description, sales and third-party verification (TPV) scripts, post-sale customer letters, and all other subscriber fulfillment information have been enclosed for your review. Please feel free to contact me, if you have any questions.

Sincerely,



Transaction Clearing, LLC

CONFIDENTIAL

QSC002565

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

Qwest ETS Form 7/98

QWEST ENHANCED TELECOMMUNICATIONS SERVICES (ETS) REQUEST FORM
This form needs to be submitted for each ETS merchant program you wish Qwest to review.

Date Request Submitted: 11/28/2007

Billing Aggregator: Transaction Clearing, LLC ABEC: 0555

Preparer's Name: [REDACTED] Title: President
Telephone Number: (210) [REDACTED] Email: [REDACTED]@transactionclearing.com
Fax Number: (210) [REDACTED]

1) Identify the Merchant's official:
Business Name: GREEN TREE DATA
Business Address: [REDACTED]
Business Telephone Number: 404 [REDACTED]
Website URL: www.greentreedata.com
State(s) of Incorporation: DELEWARE
Years In Business: 6

2) In what other parts of the country does the merchant operate (outside of Qwest's 14-state area)?
AT&T and VERIZON

3) Identify the specific service you wish Qwest to bill on the merchant's behalf:
UNLIMITED LONG DISTANCE AND UNIFIED VOICE MESSAGING

4) Identify the Merchant's name, as it will appear on the Transaction Clearing bill page:
GREEN TREE DATA

5) Identify the Merchant's sub-CIC: 49

6) What are the estimated new bill volumes (per month) for this merchant?
Current 200/New 1500

7) Identify the Type of Regulation Indicator (TORI) value you will use for this service:
X Value 3 Non-Regulated Non-Toll Value 4 Non-Regulated Toll

8) Identify the price element(s), Bill records and bill phrases to be used for billing this service:

Chg	Rate	Code	Phrase
Monthly Chg (MFC):	\$12.05	425001 X	GREENTREEDATA MONTHLY FEE
Initial Set-Up Chg:	\$14.95	425001 X	GREENTREEDATA SET UP FEE
Non-Recurring Chg:		425001	
Tax		425001	
USF		425001	

9) How will this service be marketed to subscribers (Check all that apply)?
Outbound Telemarketing Inbound Telemarketing
Internet X Other, identify:

10) Will this merchant be marketing its service to customers in Minnesota?
Yes, and billing aggregator warrants the merchant will operate in compliance with MN statute 237.065.
X No, the merchant will not market its services in the state of Minnesota.

11) Will the subscriber be assessed a telephone bill "payment option fee" (bundled or separately) when electing to bill this service through the Qwest bill? Yes No X
If yes, identify the amount of the "payment option fee"

Disposition of Request: Approved Date: Jan 2008
Reviewed By: [Signature] Title: Qwest Product Manager

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QSC002566

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

QWEST ETS REQUEST PROGRAM REVIEW - CHECKLIST OF MATERIALS		
This form needs to be submitted as part of the package for each merchant's ETS service program you wish Qwest to consider for billing.		
Billing Aggregator:	Transaction Clearing, LLC	
Billing Aggregator ABEC:	0585	
Sub-CIC/Merchant Name:	GREEN TREE DATA	
Sub-CIC Number:	49	
Date Submitted:	11/28/2007	
*** All merchant program materials must be submitted in hard-copy form via overnight mail.***		
	Included in Package	Not Included in Package
1. Introductory Cover Letter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Qwest ETS Request Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Qwest ETS Program Review Checklist	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Detailed program description	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. For Telemarketed Services:		
- Telemarketing sales scripts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Third-Party Verification (TPV) Scripts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Post-Sale Customer Letter of Confirmation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Customer Fulfillment Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. For Internet Marketed Services:		
- All website Screen Prints	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Internet Order Form(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- On-line Customer Validation Materials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Post-Sale Customer Fulfillment Materials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. End User Billing Rights Declaration Materials:		
- Minnesota Version	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- All Other State Version	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. State Certification Documentation:		
- Montana	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Washington	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. All known dispute and end user adjustment information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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QSC002567

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

Revised 3-23-05 ☐ RUSH

QWEST CLEARING AGENT (SUB-CIC) TABLE UPDATE REQUEST FORM

1) Submitted by: Transaction Clearing, LLC 2) Date submitted: 11/28/2007

3) Phone Number: (210) [REDACTED] 4) ☒ ADD ☐ CHANGE ☐ DELETE

5) Clearing Agent Number: 00585 6) AOS (Sub-CIC) Number: 00049

7) Begin Date: Y Y Y Y M M D D (Leave Blank - Qwest will assign)

8) End Date: 9 9 9 9 1 2 3 1 (required - enter '9999-12-31' if open ended)

9) Clearing Agent Name: TRANSACTION CLEARING

10) Call Handler (Sub-CIC) Name: GREEN TREE DATA

11) Call Handler (Sub-CIC) Inquiry No: 800 [REDACTED]

12) Call Handler (Sub-CIC) URL: WWW.GREENTREE DATA.C

13) Clearing Agent Entity Code: 0585 (ETS ABEC)

To be completed by Qwest

14) Pseudo CIC Indicator: ☐ 15) No Bill Indicator: ☐

To be completed by Clearing Agent

Identify the state(s) where the sub-CIC will do business within Qwest's 14-state region:

AZ	CO	IA	ID	MN	MT	ND	X
NE	NH	OR	SD	UT	WA	WY	X

Does the sub-CIC intend to provide "intrastate" services in any of the above states? Yes ☐ No ☒

Does the sub-CIC intend to provide "interstate" services in any of the above states? Yes ☒ No ☐

Specifically, will the above sub-CIC provide "intrastate" services in MT? Yes ☐ No ☒

- If yes, they must be registered to do business in MT. Please identify if they are registered in MT.

Specifically, will the above sub-CIC provide "interstate" services in WA? Yes ☐ No ☒

- If yes, they must be registered to do business in WA. Please identify if they are registered in WA.

Return Completed Form via Email To: [REDACTED]@qwest.com

Date Received: _____ Date Forwarded to TAAS Group: _____

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QSC002568

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

QWEST ETS SUB-CIC INFORMATION FORM	
<p>Prior to billing for any ETS merchant, Qwest requires each billing aggregator, in partnership with its client (merchant), to provide certain documentation for each of the merchant's services it wishes to have Qwest consider for billing. All such documentation needs to be provided in both soft-copy and hard-copy form.</p> <p>Please fill this form out completely. No incomplete form will be considered. The provision of inaccurate information may result in revocation of accepted charges without notice.</p>	
CONTENT	
I. General Information II. State Certification/Registration Requirements III. Product/Service Information IV. Third-Party Verification Information V. Inquiry Company Information VI. Requirements	
APPENDIX 1. Authorized Signature	
I. GENERAL INFORMATION	
1. Sub-CIC Name (as it will appear on the bill page)	Green Tree Data
2. Registered Name (if different from No. 1 above)	
3. DBA (separate with commas if more than one dba)	
4. Sub-CIC Number	0049
5. Sub-CIC ACNA	
6. Primary Business Location	
Address 1	
Address 2	
City	Atlanta
State	GA
Zip Code	30331
7. Primary Business Telephone Number	404
8. Primary Business Fax Number	
9. Website URL	www.greentreedata.com
10. State of Incorporation (abbreviate)	DE
11. Charter Number	
12. Date of Incorporation (m/d/yyyy)	5/29/2006
13. Years in Business	0
14. Federal Tax ID	
II. STATE CERTIFICATION/REGISTRATION REQUIREMENTS	
1. In which Qwest state(s) will the service/product offering be marketed? QWEST AZ <input checked="" type="checkbox"/> CO <input checked="" type="checkbox"/> IA <input type="checkbox"/> ID <input checked="" type="checkbox"/> MN <input type="checkbox"/> MT <input type="checkbox"/> ND <input checked="" type="checkbox"/> NE <input checked="" type="checkbox"/> NM <input checked="" type="checkbox"/> OR <input checked="" type="checkbox"/> SD <input checked="" type="checkbox"/> UT <input checked="" type="checkbox"/> WA <input type="checkbox"/> WY <input checked="" type="checkbox"/>	
2. In what other parts of the country does this merchant operate (outside of Qwest's 14-state area)? The company plans to operate across the USA in certain states.	
3. Does the merchant plan to do business in either Montana or Washington? NO If yes, provide all documentation identifying the Service Provider/Merchant is certified/registered to do business in either or both of these states, pursuant to those state's rules.	

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

4. Will this merchant be marketing its service to customers in Minnesota?

☐ Yes, and merchant warrants it will operate in compliance with MN statute 237.665.

☒ No, the merchant will not market its services in the state of Minnesota.

III. PRODUCT SERVICE INFORMATION

1. Provide a detailed description of each service, including how the end user accesses and uses the specific service.

Product Name	Detailed Product Description
Green Tree Data	Unlimited long distance and unified voice messaging

2. How is the service priced, include both recurring and non-recurring elements?

The Initial One-Time setup charge is \$14.95.

The Monthly Charge (MRC) is \$12.95.

3. Identify the price element(s), and bill phrases to be used for billing this service:

<input checked="" type="checkbox"/> Monthly Charge (MRC)	Price: 12	Phrase: VOICEMESSAGING & LONGDISTANCE
<input checked="" type="checkbox"/> Initial Setup Charge	Price: 14	Phrase: SETUP FEE VM & LD
<input type="checkbox"/> Non-Recurring Charge	Price:	Phrase:
<input type="checkbox"/> Tax	Price:	Phrase:
<input type="checkbox"/> Tel	Price:	Phrase:
<input type="checkbox"/> USF	Price:	Phrase:

4. What are the estimated current and new bill volumes (per month) for this merchant?

Current: 200 New: 1500

5. How will the service be marketed and sold to end-users? Internet

a. Provide copies of all related marketing materials and how they will be distributed.

b. If the service is sold via the Internet, provide all screen prints of the website URL.

c. If the service is telemarketed, provide copies of the telemarketing sales scripts.

6. Will the subscriber be assessed a telephone bill "payment option fee" (bundled or separately) when electing to bill this service through the Qwest bill? NO

If yes, identify the amount of the "payment option fee".

IV. THIRD-PARTY VERIFICATION (TPV) INFORMATION

1. For telemarketed services/products, Qwest requires an independent third-party verification ("TPV") be performed. Provide the TPV script detail as well as the procedures used to authenticate the End-User actually ordered and authorized the service and how this information will be shared with the end-user when a billing dispute arises. All TPV scripts for telemarketed services must incorporate the following three (3) questions (verbatim) its scripting, and, in each case, the company performing the TPV must obtain a clear and audible voice-captured "YES" response from the customer/End User.

a. "Are you at least 18 years of age and are authorized to make charges and incur charges to this telephone account?"

Customer must provide a clear and audible "Yes" response to this question.

- b. "Do you understand and agree that you are giving your authorization for (insert sub-CIC's name) to bill your local phone bill in the amount of (insert actual dollar amount) each month for this service?"

Or, as appropriate, depending on the sub-CIC's service offering:

"Do you understand and agree that you are giving your authorization for (insert sub-CIC's name) to bill your local phone bill in the amount of (insert actual dollar amount) each month for this service and a one-time set-up fee of (insert actual dollar amount)?"

Customer must provide a clear and audible "Yes" response to either question.

- c. "Do you understand this/these charge(s) will appear in your local telephone bill on the Transaction Clearing bill page, billed on behalf of (insert sub-CIC's name)?"

Customer must provide a clear and audible "Yes" response to this question.

2. Describe and provide soft-copies and hard-copies of the End User fulfillment package materials provided to the customer/end-user after the service/product has been sold, authorized and validated.

V. INQUIRY PROCEDURES AND COMPANY INFORMATION

- Provide detailed information on how the end user customer-care billing support will be handled.
CERB Guidelines Followed
- What days and hours will "live personnel" customer-care support be available?

DAYS	HOURS	TIME ZONE
Monday - Friday	Other 8am-8pm	CST
- Specifically, who (the billing aggregator, or sub-CIC/merchant) will be providing such customer-care support for the sub-CIC/merchant?
Billing Aggregator
- If the billing aggregator will not be the customer-care provider of record for the sub-CIC/merchant, explain the process the billing aggregator will use to refer the customer to the merchant.
- Provide historical information on the volumes of end user disputes and adjustments related to this service.

Disputes	Adjustments
0	0

VI. Requirement

A new Sub-CIC Information Form must be completed and submitted when any changes to the Sub-CIC information provided above takes place.

[Signature required on next page]

SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

APPENDIX A AUTHORIZED SIGNATURE

I hereby certify that the above information and attached materials for Sub-CIC are true and accurate, and that Sub-CIC will not submit billing records in any state in which the Sub-CIC has not complied with any and all applicable regulation and/or certification regulations in order to have its charges appear on the LEC local phone bill and to do business in that state.

Signature - Please keep signature within the box

Carol Delatch

Type Name Carol Delatch
Title President
Date (m/d/yyyy) 10/10/2007

Electronic signature will not be accepted

4

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QSC002573

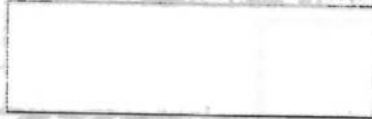
SAMPLE QWEST THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

APPENDIX E. AUTHORIZED SIGNATURE

I hereby certify that the above information and attached materials for Sub-CIC are true and accurate, and that Sub-CIC will not submit billing records in any state in which the Sub-CIC has not complied with any and all applicable registration and/or certification regulations in order to have its charges appear on the LEC local phone bill and to do business in that state.

Signature - Please keep signature within the box.



Type Name Carol Deloatch
Title President
Date (m/d/yyyy) 10/10/2007

Electronic signature will be accepted.

SAMPLE AT&T THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

SUB-CIC INFORMATION FORM
FOR BILLING WITH:
(select all that apply)

- ☒ Southwestern Bell Telephone Company, d/b/a AT&T Texas, AT&T Oklahoma, AT&T Missouri, AT&T Kansas, AT&T Arkansas
- ☒ Pacific Bell Telephone Company, d/b/a AT&T California
- ☒ Nevada Bell Telephone Company, d/b/a AT&T Nevada
- ☒ Illinois Bell Telephone Company, d/b/a AT&T Illinois
- ☒ Indiana Bell Telephone Company, Inc., d/b/a AT&T Indiana
- ☒ Michigan Bell Telephone Company, d/b/a AT&T Michigan
- ☒ The Ohio Bell Telephone Company, d/b/a AT&T Ohio
- ☒ Wisconsin Bell, Inc., d/b/a AT&T Wisconsin
- ☒ The Southern New England Telephone Company, d/b/a AT&T Connecticut
- ☒ BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, AT&T Tennessee
- (Collectively, the "AT&T Telcos")

(Denote with an "X" or "State Abbreviation" on which Region(s) this form is being completed.)

Please fill this information form out completely. No incomplete form will be considered. The provision of inaccurate information may result in revocation of the AT&T Telcos' acceptance of charges from the billing aggregator without notice.

- Billing Aggregator/B&C Customer's Name: HBS
Billing Aggregator/B&C Customer's CIC: 642
- Sub-CIC's Name: USA Photo House LLC
Sub-CIC's Number: 026
- Sub-CIC's Company Address: 4142 Olmstead Station Rd Suite 617
City, State, ZIP Code: Newark DE 19713
Sub-CIC's Primary Telephone Number: 302- [REDACTED]
- Sub-CIC's State of Incorporation: Delaware
Sub-CIC's Date of Incorporation: 2-4-2008
Sub-CIC's State Charter Number: [REDACTED]
(Attach copy of Sub-CIC's Articles of Incorporation)
Sub-CIC's Federal Tax ID: [REDACTED]
- List the names of all current and former Officers of Sub-CIC at any time during the past 7 years (Attach additional sheets as needed)
President: Vito Lanza, Managing Partner
Vice President: _____
Chief Financial Officer: _____
Secretary/Treasurer: _____

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DC_CST0046487

SAMPLE AT&T THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

Directors _____
 Principals _____
 Owners _____
 Partners _____

6. List the names of any and all current and former affiliates and subsidiaries of Sub-CIC, including all other company or marketing names currently and formerly employed by those affiliates and subsidiaries, as well as all other company or marketing names currently and formerly employed by this Sub-CIC. Include the names of any and all business enterprises, corporations, joint ventures or partnerships with whom any of the individuals who currently serve or have served as Officers, Directors, Principals, Owners or Partners of Sub-CIC are now or have ever been associated, and that have either generated or submitted charges to be billed on any AT&T Telcos bill.
N/A

7. a. Is the Sub-CIC currently either generating or submitting billing for inclusion on the bill to end user customers of any AT&T Telcos under a billing and collections contract?
NO
 (If yes, list applicable AT&T Telcos)

7. b. Is the Sub-CIC currently either generating or submitting billing for inclusion on the bill to end user customers of any AT&T Telcos under a different Clearinghouse/Aggregator?
NO
 (If yes, list Clearinghouse/Aggregator and which AT&T Telcos are applicable).

8. Have any AT&T Telco, LEC, or Clearinghouse/Aggregator ever terminated, modified, or suspended, billing for this company?
NO

Name	Reason	Date(s)
_____	_____	_____
_____	_____	_____
_____	_____	_____

SAMPLE AT&T THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

9. a) Have complaints been lodged against the Sub-CIC and/or any Officers, Directors, et al, together with any fines, penalties, or other sanctions announced or ordered (whether final, appealable, or otherwise) in the last two (2) years? This includes complaints lodged by agencies including, but not limited to the following, any and all state regulatory commissions, attorneys general, Federal Trade Commission, and/or Federal Communications Commission.

NO

If yes, list complaints and indicate whether or not the status of the complaint is final or appealable.

9. b) Has the company ever been involved in lawsuits, federal/state, civil or criminal, investigations related to the billing or provisioning of telecommunications- and/or information-related services in the past two (2) years?

NO

If yes, please attach a copy of each such suit, petition or investigation. In addition, provide a list of all lawsuits and federal and/or state civil or criminal suits or investigation currently anticipated to be filed or announced within the next twelve (12) months that may involve either your company or any of your officers, directors, partners or owners, in their current capacity or otherwise.

10. List your percentage of adjustments by a) billed revenue (dollars adjusted divided by total billed revenue) and b) bills rendered (number adjustments divided by total bills rendered) in the last six (6) months.

NO

% of Adjustments by
Billed Revenue

% of Adjustments by
Bills Rendered

11. Type of Business (check all that apply):

☐ DXC ☐ Reseller ☐ OSP ☐ COCOT ☐ 900 (Pay per Call)
☐ Cellular ☐ Inmate
☒ Other - Explain: Enhanced Service Provider

Type of products/services to be billed (If 900, describe service in detail - Preamble must be submitted in writing, per marketing material requirements):
Online Photo Storage

Preamble Form:



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DC_CST0046489

SAMPLE AT&T THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

12. Estimated volume of bills rendered on a monthly basis:
 Southeast Region (AL, FL, GA, KY, LA, MS, NC, SC, TN):
5000

All other regions (AR, CA, CT, IL, IN, KS, MI, MO, NV, OH, OK, TX, WI):
15000

13. Inquiry Company Name: HBS
 Address: 7411 John Smith Drive
 City, State, ZIP Code: San Antonio TX 78229
 Telephone Number: 800-687-5401
 Hours of Operation: 7-7 CST

14. Describe the inquiry procedures concerning customer satisfaction and adjustments:
Customers may cancel service at any time and request adjustments by contacting customer service.

15. Name, Address and Telephone Number of company providing independent third party sales verification for products and services (if applicable):

Name: _____
 Address: _____
 City, State, ZIP Code: _____
 Telephone Number: _____

Relationship of Sub-CIC to sales verification company:

16. Mark with an "X" the states in which the Sub-CIC is operating and requesting billing services:

<input checked="" type="checkbox"/> AL	<input checked="" type="checkbox"/> AR	<input checked="" type="checkbox"/> CA	<input checked="" type="checkbox"/> CT	<input checked="" type="checkbox"/> FL
<input checked="" type="checkbox"/> GA	<input checked="" type="checkbox"/> IL	<input checked="" type="checkbox"/> IN	<input checked="" type="checkbox"/> KS	<input checked="" type="checkbox"/> KY
<input checked="" type="checkbox"/> LA	<input checked="" type="checkbox"/> MI	<input checked="" type="checkbox"/> MO	<input checked="" type="checkbox"/> MS	<input checked="" type="checkbox"/> NC
<input checked="" type="checkbox"/> NV	<input checked="" type="checkbox"/> OH	<input checked="" type="checkbox"/> OK	<input checked="" type="checkbox"/> SC	<input checked="" type="checkbox"/> TN
<input checked="" type="checkbox"/> TX	<input checked="" type="checkbox"/> WI			

Note: Separate Sub-Entity Change/Request Form should be attached for each AT&T Telcos.

Provide proof of Public Utility/Service Commission certification/registration (as required) for each state indicated above in which billing will be submitted.

17. Provide proof of registration with the Secretary of State's office, and any DBA (Doing Business As) or Fictitious Business Name Statement(s) registered and filed within applicable jurisdictions e.g., county, state for person(s) is (are) doing business as (dba) for the states in which your company plans to submit billing.

SAMPLE AT&T THIRD-PARTY VENDOR APPLICATION

EXHIBIT 3

The AT&T Telcos reserve the right to verify the information provided on this Form and to seek additional information when such may be warranted. Sub-CIC Company understands that the AT&T Telcos have no obligation to make such verification prior to acceptance of this Sub-CIC application form and that such acceptance does not constitute either verification of the accuracy of the information provided or grounds for detrimental reliance if such acceptance is later withdrawn. Sub-CIC Company understands this form does not constitute a contract or obligation, of any sort, on the part of the AT&T Telcos to bill the Sub-CIC's charges, that the only billing and collection contract had with the AT&T Telcos is by the billing aggregator, and that the AT&T Telcos retain the right to refuse to commence or suspend acceptance for the billing aggregator, at any time and without prior notice, for any reason and no reason, of billing generated by or on behalf of Sub-CIC Company; as a result of complaints received, concerns raised by the information contained herein, or if the information provided herein by Sub-CIC Company is either inaccurate, misleading, incomplete, or false, when submitted, or becomes inaccurate, misleading, incomplete or false at some future date and is not supplemented, in a timely fashion, by Sub-CIC Company, so as to make it full, complete, accurate and not misleading. Sub-CIC Company also acknowledges that the AT&T Telcos reserve the right to contact customers billed by Sub-CIC Company to verify that the customer did authorize charges submitted to the AT&T Telcos for billing.

Sub-CIC company will include a disclaimer in information imparted to end users which will be similar to those below and will contain all information noted, with respect to the states noted.

"You have the right to dispute the (company name) charges billed on your local telephone bill. You are not legally responsible for (company name) charges incurred by minors or vulnerable adults without your consent. Your local telephone service will not be disconnected because you fail to pay a charge by (company name), except that suspension of certain regulated telecommunications charges may result in disconnection of service in Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina and Tennessee."

In the event a free trial is offered for any period of time before the commencement of billing on the Telco bill, the Disclaimer Statement must also advise that the AT&T Telco and user will be contacted prior to the commencement of that billing to ensure the Telco and user is willing to accept the charges for that product for which the free trial was offered and accepted.

The applicable Disclaimer Statement above will be presented in the TPF if sale was via Telemarketing, on the Ordering Page if the sale was received via a web link (on-line) and will also be included in the Confirmation Letter and/or Email to the end user.

* Company Signature: Vito Lano
Name: Vito Lano
Title: Managing Partner
Date: 8/18/08

A new Information Form must be completed and submitted when any changes to the information provided within takes place.

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DC_CST0046491

Appendix A

Cramming Case Studies

During the Committee's investigation, Committee staff spoke with hundreds of residential consumers and dozens of nonresidential consumers about their experiences with cramming on their landline telephone bills. Both residential and nonresidential consumers reported that they are angry they had to spend time and money trying to cancel unauthorized services and recoup the dollars lost to cramming. Consumers also reported that they are frustrated by the way their telephone companies have responded to their cramming complaints.

Committee staff believes that the cases discussed below provide a representative example of consumers' experiences with cramming. The cases highlighted include: residential consumers, small and large businesses, not-for-profit organizations, and Federal, state and local governments. In presenting the cases, Committee staff is not including the names of the businesses that spoke to Committee staff about cramming. Some businesses stated that they did not want to acknowledge publicly

the extent to which they have experienced cramming. Others expressed concern that publicly discussing cramming could negatively affect their relationships with telephone companies that, in some instances, are both their service providers and their clients.¹

Table of Contents

I. Residential Consumers

II. Small Businesses

III. Large Businesses

IV. Nonprofit Organizations

V. Federal Government

VI. State and Local Government

I. Residential Consumers

Gordon Jones—Gridley, California ² In January 2010, retired consumer, Gordon Jones, read an article that warned consumers about cramming. Mr. Jones then reviewed his own telephone bills and discovered that four different third-party vendors—E-mail Discounts, Intelicom Messaging, Total Protection Plus, and Debt Toolbox—had been cramming charges onto the bills for years.

Mr. Jones began sending e-mails to the third-party vendors and their billing aggregators to cancel the services and request refunds. In an e-mail to one of the billing aggregators, he explained that he had not authorized these services. He said:

I must again reiterate that I have had no known contact with these 3 providers. I know of no services that they claim to have provided to me. I deny ever knowingly agreeing to any business relationship with them whatsoever. The implied services that they appear to provide (based strictly on my review of their company names) are not now, nor have they ever been, needed by me or my family.

In another e-mail, Mr. Jones asked one of the third-party vendors to provide proof that he had authorized enrollment in its service. Upon reviewing the supposed proof of authorization, he realized that the enrollment had allegedly occurred at a time when he and his wife were camping in a remote section of the state, without cell phone or Internet service.

Mr. Jones wrote in a complaint to the California Public Utilities Commission that when he “contacted AT&T about the issue—[he] was told to read the small print, be careful what boxes you check, etc.” He also filed a complaint with the FCC that stated, in part:

This is a continuing problem and it needs to be addressed and brought under control. Clearly, under the Telecommunications Act of 1996 enterprising criminals have found a sure fire way to use 3rd party billing as a lucrative fraudulent scheme.

After three months of fighting, Mr. Jones received more than \$1,000 in credit on his telephone bill. However, despite having asked AT&T to block all third-party charges, he noticed in December 2010 that he had been crammed again by a company called CelebNewsAddict.

Jennifer Ngah—Fitchburg, Massachusetts ³ In February 2010, Jennifer Ngah noticed that the amount of her automatic bill payment to Verizon seemed to be increasing each month. To determine the cause for the increased payments, Ms. Ngah reviewed her bill and discovered that several third-party vendors were charging her. One of the vendors had been charging her for over six months.

Frustrated with the lack of assistance she received from Verizon, Ms. Ngah complained to the FCC. In her complaint, she wrote:

Over the last several months someone was fraudulently using my phone [number] to purchase services online. Anyone who can get a phone [number] can charge services to this [number].

¹ Some businesses cited similar concerns in declining to provide Committee staff any information regarding their experiences with cramming.

² Committee staff telephone interview with Gordon Jones (June 6, 2011); E-mail from Gordon Jones to ESBI (Feb. 2, 2010); E-mail from Gordon Jones to California Public Utilities Commission (Jan. 13, 2010); E-mail from Gordon Jones to FCC (Jan. 16, 2010).

³ Committee staff telephone interview with Jennifer Ngah (June 27, 2011); Complaint from Jennifer Ngah to FCC (Mar. 5, 2010) (Verizon Doc. VZ_003_002478).

The complaint goes on to describe the burden of trying to remedy the situation, stating, “when I notified Verizon they said they were not responsible . . . I spent hours notifying these third party companies and trying to get my money back.”

In the end, Ms. Ngah only received credit for three months from one of the third-party vendors that crammed charges onto her telephone bills, and no assistance from Verizon.

*Barbara Arnold—Uniontown, Pennsylvania*⁴ In March 2009, Barbara Arnold, a nurse, contacted Verizon to look for ways to lower her family’s monthly telephone bill. She was surprised when Verizon suggested that she consider canceling some of the enhanced services Verizon said she was enrolled in. She had never noticed that she was paying for services from three separate third-party vendors, two of which were for voice-mail. After talking to Verizon, she discovered that those third-party vendors had crammed more than \$220 of charges onto her telephone bills.

Although Verizon alerted her to the extra charges, Verizon was unwilling to assist her or refund any of her money. Verizon instead told her she would need to contact each of the third-party vendors. The third-party vendors were reluctant to refund her money, arguing that she had authorized the services. Ms. Arnold responded by saying that she had “NEVER approved or accepted such services and this was clearly evident when one company stated an incorrect mother’s maiden name as a security check for the account.”

Ms. Arnold filed a complaint with Pennsylvania Attorney General on April 3, 2010. Her complaint states:

It sickens me that this can happen and I feel I was taken advantage of . . . I am a professional nurse and working mother and neither I nor my husband have time to watch our bills so closely and then sit on the phone for HOURS like I did on Friday 4/1/10 to rectify this error.

*John Murray—Dallas, Texas*⁵ In July 2010, John Murray noticed multiple third-party charges on his AT&T bill that he did not recognize. Mr. Murray tried repeatedly to cancel the services and receive refunds but found the experience difficult and troubling.

He described his encounters with AT&T and the third-party vendors in a letter to the Texas Public Utility Commission. He wrote:

I recently received a monthly statement from AT&T. On that bill there were four charges that I not only didn’t authorize, I didn’t even recognize the companies involved, one charge was for a voice mail service for my dedicated fax line.

When I contacted AT&T, they said they were “just the billing company” and couldn’t do anything about it. I then called the 800 numbers that AT&T gave me for the vendors. Two of them said they would issue credits, in one or two more billing periods. One said “we don’t give refunds” and the other hung up three times when I gave the requested phone number the charge was billed to.

Mr. Murray concluded his letter by saying, “obviously this is a scam and the telephone company is a partner in it. What recourse do I have?”

II. Small Businesses

*Physical Therapy Business*⁶ A self-described “small business” owner in Alabama wrote Chairman Rockefeller a letter stating that cramming has been a “detrimental” problem for his physical therapy and rehabilitative services business. In May 2010, the business obtained more than \$450 in billing credit from a “website” service that had crammed a recurring monthly charge on its telephone bills for almost 3 years. To obtain that credit, the business owner and his staff “spent countless time” reviewing old telephone bills and talking to the telephone company and Alabama Public Service Commission. The website service claimed that one of the business’ employees enrolled the business in its service. The address that the website service

⁴Committee staff telephone interview with Barbara Arnold (June 3, 2011); Consumer Complaint to Pennsylvania Office of the Attorney General (Apr. 3, 2010) (produced to Commerce Committee by daData, Inc. without Bates numbers).

⁵Committee staff telephone interview with Jack Murray (June 6, 2011); Letter from Jack Murray to the Public Utility Commission of Texas (Aug. 4, 2010) (produced to Commerce Committee by daData, Inc. without Bates numbers).

⁶Letter from owner of physical therapy and rehabilitative services business to Senator John D. Rockefeller IV (Apr. 26, 2011); Committee staff telephone interview with physical therapy business owner and employee (Apr. 25, 2011).

claimed that the employee provided when she allegedly enrolled in the service is neither the business' address nor the employee's home address.

*Popeyes and Krispy Kreme Franchisee*⁷ An employee of a franchisee of Popeyes and Krispy Kreme restaurants reported in a letter to Chairman Rockefeller that third-party vendors crammed six of the company's telephone accounts for many months with recurring monthly charges for services such as electronic facsimile. After working for two months to resolve the issue, the company obtained approximately \$4,200 worth of billing credits.

When the company initially discovered cramming on its telephone bills in October 2010, the company called AT&T for assistance. AT&T told the company that it receives a lot of calls about cramming and told the company that it needed to call the third-party vendors directly to cancel the crammed charges and request billing credits.

When a company employee contacted one of the third-party vendors to try to seek billing credit, the vendor initially refused to provide any credit. After the company employee asked the vendor to play recordings of the conversations in which company employees allegedly had enrolled in the vendor's services, the vendor agreed to provide credits. The vendor never played any such recordings for the company.

The company's letter to Chairman Rockefeller explains that company employees had to spend a lot of time dealing with cramming and that some of the company's restaurant managers even lost bonuses because the crammed charges affected their restaurants' profit and loss statements. The letter states:

It certainly is annoying and a hassle to deal with additional administrative paperwork, making additional phone calls and keeping information organized especially for charges not requested. Our already busy Accounting Department had to deal with their own administrative issues such as re-adjusting Profit and Loss statements, etc. The inconvenience and cost of administrative work on this issue pales in comparison to what it has taken away from the managers of our restaurants.

Our managers work long hours in a busy, demanding environment all with a smile on their faces. They have a tremendous job juggling employee relations, customer satisfaction and controlling costs. And some of our managers, no matter how hard they worked and no matter how much they earned it, did NOT receive bonuses because of cramming. Due to Year End, many P&L statements were not able to be fully corrected and therefore bonuses were lost.

It is infuriating to me that it is legal for companies to, without authorization, charge our businesses and skew our Profit and Loss statements and, in effect, take money out of the hands of hard working, deserving men and women.

*Real Estate, Lodging, and Golf Course Business Owner*⁸ The owner of several businesses in Nevada told Committee staff that he discovered in February 2010 that seventeen different third-party vendors had been cramming charges onto the businesses' AT&T telephone bills for services such as online business listings, voice-mail, identity theft protection, and streaming video for as long as twenty months each. He was particularly surprised to discover the various third-party charges because he believed that he had previously requested that AT&T block his telephone lines from third-party billing.

AT&T told him that he needed to contact the various billing aggregators or third-party vendors to cancel the charges and seek billing credits. After spending more than 60 hours working on the issue, including filing complaints with his Congressman and law enforcement agencies, he obtained partial billing credits for the unauthorized charges totaling more than \$4,000. He was not able to obtain full credit for some of the individual charges. He has now switched his business telephone service to a company that does not permit third-party billing on business lines.

*Bicycle Retail Store*⁹ A bicycle store in Illinois told Committee staff that it discovered in December 2010 that its AT&T telephone bills included unauthorized charges for a virtual facsimile and voice-mail service called Contact Message Tech II. The charges totaled approximately \$1,500 over a 30-month period.

Contact Message Tech's billing aggregator, ILD, initially offered the bicycle store a six-month refund. When the bicycle store co-owner later contacted Contact Message Tech to demand a full refund, a Contact Message Tech representative told the

⁷Letter from Popeyes and Krispy Kreme franchisee employee to Senator John D. Rockefeller IV (May 25, 2011).

⁸Committee staff telephone interview with real estate, lodging, and golf course business owner (Mar. 1 and 17 and June 3, 2011); E-mail messages from business owner to Commerce Committee staff—(Mar. 17 and 18, 2011).

⁹Committee staff telephone interview with bicycle retail store co-owner (Mar. 8, 2011).

bicycle store that one of the bicycle store's authorized employees had enrolled the bicycle store in its service during a telemarketing call. Contact Message Tech played the bicycle store co-owner a recording of that telemarketing call, and she determined that the person who purportedly consented to enroll the bicycle store in Contact Message Tech was not an employee of the bicycle store. The bicycle store co-owner also observed that the Contact Message Tech representative spoke so quickly on the recording that it was difficult to understand what he said.¹⁰ The bicycle store co-owner asked Contact Message Tech to identify the telephone number that it had called to telemarket its service to the bicycle store, and Contact Message Tech declined to do so. Contact Message Tech then agreed to provide the bicycle store a full refund.

The bicycle store co-owner contacted AT&T to ask why parties other than AT&T could place charges on the store's telephone bill. To her surprise, AT&T told the bicycle store that its telephone bill could be used like a credit card. AT&T told the bicycle store that it could block third-party charges from appearing on the store's future telephone bills, but stated that AT&T's "hands are tied" unless a customer requests third-party blocking.

*Industrial Service Company*¹¹ An industrial service company in Virginia told Committee staff that it has battled cramming on its Verizon landline telephone bills since 2007 for services such as voice-mail and credit repair. The company has sometimes had trouble finding a way to contact the third-party vendors that have placed charges on its bills. The company requested that Verizon block its telephone lines from incurring third-party charges, but it later incurred additional third-party charges on the same lines. The company complained to state regulators that its employees continued to have to spend time identifying and resolving crammed charges because Verizon's blocking system did not work. The company also advocated for state legislation to prevent cramming.

*Drug Store*¹² A drug store owner in Missouri told Committee staff that his store incurred almost \$650 worth of unauthorized third-party charges on its landline telephone bills for purported "technical support" between late 2009 and late 2010. When the drug store owner contacted AT&T to inquire about the charges, AT&T told him that he needed to call the third-party vendor or billing aggregator to dispute the charges. The drug store owner then contacted the billing aggregator, and the billing aggregator stated that a drug store employee enrolled in the technical support service during a telemarketing call. Although the drug store owner asked to hear a recording of the telemarketing call, the billing aggregator did not play it.

None of the drug store's employees recall enrolling in the technical support service. The drug store owner told Committee staff that when telemarketers call to solicit the drug store's business, they try to solicit "yes" answers to questions so that they can record the answers and use them to say that the business agreed to enroll in their services. The drug store contacted the Missouri Attorney General's Office for assistance in obtaining a refund for the unauthorized charges.

III. Large Businesses

*Bank #1*¹³ A large, multistate bank told Committee staff that third-party billing on landline telephone bills is a "rife opportunity for fraud." Cramming has been a problem on the bank's landline telephone bills from multiple telephone companies since at least 2009. The bank has identified 75 different vendors that have crammed charges onto its telephone bills for services such as music downloads, voice-mail, and directory assistance. The bank reported that it is difficult to identify crammed charges, in part, because the crammed charges are spread out among the thousands of pages of the many telephone bills the bank receives each month.

The bank's contracts with the telephone companies identify only one employee as being authorized to order telephone services for the bank. Consequently, the bank does not understand why the telephone companies add third-party charges to its bills without requiring proof that the single authorized employee has ordered the third-party services. The bank told Committee staff that third-party entities should not be exempt from the bank's contractual requirements with the telephone companies regarding who is authorized to order telephone services.

¹⁰Committee staff has obtained a copy of the recorded telemarketing call that Contact Message II claims is its proof that the bicycle store enrolled in its service. The recorded telemarketing call refers to a service called "Advanced Business Services" but does not refer to "Contact Message Tech." Both Contact Message Tech and Advanced Business Services are associated with daData, Inc.

¹¹Committee staff telephone interview with industrial service company employee (May 26, 2011).

¹²Committee staff telephone interview with drug store owner (Apr. 19, 2011).

¹³Committee staff telephone interview with bank #1 employees (May 24, 2011).

The bank stated that the third-party vendors, billing aggregators, and telephone companies have not been helpful. Some third-party vendors have refused to cancel their charges on the grounds that the bank employee who called to dispute the charges did not call from the same telephone number that the vendor was charging for the third-party service. The bank said that the telephone companies require the bank to prove that third-party charges are not authorized rather than requiring the third-party vendors to prove that the charges are authorized.

About a year ago, AT&T told the bank that AT&T is legally required to allow third-party billing. AT&T stated that it could block particular third-party vendors from placing charges on the bank's telephone lines if the bank provided AT&T spreadsheets that contain the bank's billing telephone numbers and a list of the third-party vendors that have crammed the bank's lines in the past. Even after the bank provided that information to AT&T, the bank continued to incur crammed charges on telephone lines that it asked AT&T to block from third-party billing.

*Bank #2*¹⁴ Another large multistate bank told Committee staff that it has incurred hundreds of unauthorized third-party charges on its landline telephone bills since 2005. When the bank contacts a billing aggregator to dispute unauthorized third-party charges on particular lines, it requests that the aggregator block future third-party charges from being placed on those lines. Nevertheless, new third-party merchants subsequently cram charges on those same lines. The bank has not requested that its telephone companies block all of its lines from all third-party billing because the bank believes it would be very difficult to create a list of all of the bank's telephone bills, and it believes that the telephone companies cannot implement blocking unless the bank provides such a list. AT&T has told the bank that it is legally required to permit third-party billing.

*Bank #3*¹⁵ A third multistate bank reported that third-party charges have been crammed onto many of its telephone lines, including lines for vaults and fire alarms and other lines with unpublished telephone numbers. This bank stated that the crammed charges sometimes total hundreds of dollars per month. The bank also reported that it has experienced large increases in cramming when it has added large numbers of new lines to its telephone bills after acquiring other financial institutions. Multiple telephone companies have told this bank that they cannot block its lines from incurring third-party charges. Verizon recently told the bank that it would try to block the bank from incurring third-party charges in one state by imposing a block on the bank's billing telephone numbers, but Verizon stated that it was not yet ready to try to implement a similar block in other states.

*Bank #4*¹⁶ A fourth major bank reported that it has been battling cramming on its landline telephone bills from multiple telephone companies for several years. The bank experiences cramming most often on the bills it receives from the largest telephone companies. Between May 2010 and April 2011, the bank identified 360 instances of cramming on its landline telephone bills. The bank stated that it "is quite arduous and time consuming" to address crammed charges. Its employees spend an average of thirty minutes addressing each crammed charge. The bank reported that it has endured "a lot of scripted conversations" when it has contacted third-party vendors to try to dispute charges that the vendors have crammed on the bank's telephone bills. Some third-party vendors "fight tooth and nail" when the bank disputes crammed charges.

The bank has identified crammed charges for services such as voice-mail, long distance calling plans, diet plans, credit protection plans, webhosting, online coupons, identity theft protection, music downloads, photo storage, electronic facsimile, and ringtone downloads. Its telephone bills have included crammed charges that were billed to spare lines that were not assigned to any employee and to lines for automated teller machines, alarms, facsimile machines, modems, and equipment monitoring. The bank does not rely on third-party landline telephone billing as a way to pay for any services that it has authorized.

In 2008, the bank complained to the FCC regarding cramming on its landline telephone bills. The bank states that its request for the telephone companies to block third-party charges from all its telephone accounts, and its ongoing efforts to provide the telephone companies with updated lists of all of its telephone accounts, have subsequently reduced the amount of cramming on its telephone bills.

¹⁴ Committee staff telephone interview with bank #2 employee (May 5, 2011).

¹⁵ Committee staff telephone interview with bank #3 employee (Apr. 25, 2011).

¹⁶ E-mail message from bank #3 employee to Commerce Committee Staff (June 20, 2011); Committee staff

*Bank #5*¹⁷ A fifth large multistate bank began to notice cramming on its landline telephone bills in 2010. The bank has since identified approximately \$20,000 of crammed charges during the first several months of 2011 for services such as fraud alerts, identity theft protection, voice-mail, music downloads, and long distance. Many of the charges have been crammed onto unpublished telephone numbers for modems, alarms, facsimile machines, and other telephone lines that are not assigned to individual employees.

The bank is not aware of any instance in which any of its employees authorized any third-party charges on the bank's telephone bills. In 1 month, the bank contacted approximately fifty employees whose telephone lines had incurred third-party charges. None of the employees stated that they had signed up for the services for which their lines had incurred charges.

When the bank requested that AT&T assist it in dealing with cramming, AT&T stated that it is legally required to permit third-party billing on its telephone bills. AT&T initially helped the bank cancel and receive billing credit for some of the charges that had been crammed onto its bills, but AT&T later "politely backed off" and stated that the bank needed to contact the third-party vendors itself. The bank now contacts the billing clearinghouses to cancel crammed charges and seek billing credit. The bank has not had the time to dispute all the crammed charges it has identified. The bank reported that third-party billers and billing clearinghouses "make it hard to [dispute their charges] quickly."

The bank used to receive summary telephone bills that made it difficult to identify crammed charges and made it difficult to dispute the crammed charges because the bank could not identify which individual telephone lines had incurred crammed charges and which third-party vendors had crammed them. The bank now receives more detailed telephone bills that provide this information.

*Auto Parts Retailer*¹⁸ A large, nationwide auto parts retailer sent Chairman Rockefeller a letter estimating that the company has incurred \$550,000 in unauthorized third-party charges on its telephone bills during the past 10 years. The company estimates that three full-time employees spend approximately 25 percent of their time dealing with cramming, thereby having cost the company approximately 26,000 labor hours and approximately \$400,000 in overhead expenses. Approximately 80 percent of the company's more than 3,600 locations have had charges crammed onto their landline telephone bills.

The company reported that it took years for one of the major telephone companies to assist the company with cramming by blocking third-party charges from its telephone bills. And the company explained that it still regularly experiences cramming on the telephone bills that it receives from that particular telephone company for new company locations even though the company requests blocking of third-party charges whenever it orders lines for new locations. The company's letter to Chairman Rockefeller states:

During our communications with the various carriers, we sought ways to block third party billing to our accounts. Some regional bell operating centers (RBOCs) were willing to find work arounds for this issue; others insisted there was nothing they could do about it. We were however astounded and amazed when one of our billing analysts discovered a flyer in an envelope with one of the individual bills we received from one of the carriers who had insisted it was out of their hands. The flyer explained customers could now "block" third party billing. When we approached our assigned account team at the carrier with the flyer, they requested a copy and advised they would have to investigate. We have however followed consistently and persistently with them over a period of 2 years and are now able to block third party billing from existing accounts. Of course, we believe our ability to do this is a direct result of our tenacity.

The ability to block on existing account[s] however has not allowed us to eradicate the practice of cramming. As a growing company, we frequently open new stores. Typically, we will open in excess of 150 new locations each year. Despite the fact we request a block on third party billing with each new order, we typically see third party charges on the first and or second month's bill from this carrier.¹⁹

¹⁷ Committee staff telephone interview with bank #5 employee (June 22, 2011).

¹⁸ Letter from auto parts retailer to Senator John D. Rockefeller IV (June 28, 2011).

¹⁹ As an example of its ongoing problem with cramming, the auto parts retailer told Committee staff that a new company store recently incurred almost \$400 worth of crammed charges on its first 2 monthly telephone bills. Committee staff telephone interview with auto parts retailer employee (May 20, 2011).

Often, the carriers simply refer you to the third party biller or their third party clearinghouse. Often, they will attempt to persuade that someone within the company signed up for and authorized the services by phone or through the Internet. [We have] consistently trained local store managers and communicated to carriers that local store managers lack the authorization to bind the corporation for these services. While we expect a team member to make a mistake from time to time, we believe our training is effective and view the continuation of cramming a purposeful decision on the part of carriers to circumvent communication to them regarding our corporate authority structure. In addition, our team members do not have store access to the Internet. It seems unlikely they would go home and sign up their store for any of these services. There have been times when recordings have been made to evidence the alleged purchase of services. While some calls sound legitimate, others, in our opinion do not. The carriers or clearinghouses cannot and/or do not ever produce any documentation purporting to actually be signed by an employee with any authority. One might only surmise that doing so results in a pecuniary benefit, not only to the crammers, but to the LEC's.

Whether the consumer is an individual or corporation, we view the practice of cramming as unethical and fraudulent. We ask the committee to recommend proposed legislative action to preclude this practice including an express statutory private right of action and include equitable and damage remedies as well as an attorney fee provision and punitive damages based upon a finding that conduct is pervasive, egregious or outrageous.

*Real Estate Company*²⁰ A company that owns, operates, and manages office properties in several states told Committee staff that it has spent "an amazing amount of time" over a two-year period to try to get cramming "under control." The company's landline telephone bills have sometimes contained twenty to fifty crammed charges per month, including charges that were attributed to telephone lines for elevators and alarms. The company has received more than \$10,000 in billing credits for crammed charges. The company recently switched some of its telephone service to a telephone company called Granite, in part, because Granite does not allow third-party billing on its telephone bills.

The company has complained about cramming many times to the multiple telephone companies that have allowed third-party charges to be included on its telephone bills. Those telephone companies, in turn, have done little more than acknowledge that they receive a lot of complaints about cramming.

For example, the company told Committee staff it was very difficult to get the telephone companies to block the company's lines from cramming. Verizon told the company that it had implemented blocking on the company's Verizon telephone lines but later said that they had blocked the lines from something other than third-party billing because of the manner in which the company phrased its request. AT&T told the company that it had only limited ability to block the company's lines from third-party billing and that AT&T's ability to implement blocking varies in different regions of the country. Even after AT&T told the company that it implemented blocking on particular telephone lines, the company incurred additional unauthorized third-party charges on those same lines.

Receiving its telephone bills in electronic format made it difficult for the company to cancel crammed charges. The electronic bills attribute the crammed charges to the main telephone number listed on each bill rather than the individual telephone numbers that individual third-party vendors claim to have enrolled in their services. Consequently, the company has had difficulty canceling third-party charges when it has contacted billing aggregators or third-party merchants because the company has not been able to specify which particular telephone numbers have incurred charges for the services.

*Movie and Game Store Chain*²¹ A large, multistate movie and game store chain whose corporate policy requires the corporate office to authorize all services that are billed to the stores' telephone bills regularly incurs thirty to fifty crammed charges per month on the stores' telephone bills. Before the company began systematically checking for and disputing crammed charges, the company incurred even more crammed charges. Each crammed charge costs as much as \$100 per month for serv-

²⁰ Committee staff telephone interview with office property committee employee (June 3, 2011).

²¹ Committee staff telephone interviews with movie and game store chain employee (June 7 and 24, 2011); daData Docs. DAT366879-80.

ices that the company already provides its stores, or services that the stores do not want.

The company sends its employees a memo regarding cramming three times per year to remind employees, for example, to hang up when telemarketers call the company's stores. The company believes that some third-party vendors that cram charges onto its stores' telephone bills manipulate recordings of telemarketing calls to make it seem like company employees answered "yes" when they were asked whether they wanted to enroll in the third-party vendors' services, when they actually answered "yes" in response to other questions that had nothing to do with enrolling in the services. Employees in some stores that have incurred crammed charges recall that they specifically told a telemarketer that they did not want to enroll in the third-party services for which their stores have incurred charges. Because employees do not have access to browse the Internet in the company's stores, the company does not believe that its employees use the Internet to enroll their work telephone numbers in third-party services.

During the Commerce Committee's investigation, the Committee obtained copies of the records that purport to evidence the enrollment of two of this company's stores in services that are associated with daData, Inc.: USA Voice-mail and Meteline Voice. Both of the authorization records contain the names of actual employees of the company and the correct addresses and telephone numbers of company stores, but they both contain invalid e-mail addresses that both misspell the company's domain name in an identical manner. In addition, the authorization record pertaining to Meteline Voice claims that a company employee enrolled one of the company's Kansas stores in Meteline Voice even though that employee works in another part of the country.

*Food and Beverage Retail Chain*²² A large food and beverage retail chain whose corporate policy prohibits store employees from authorizing any third-party billing told Committee staff that its telecommunications expense management company has identified approximately \$100,000 worth of crammed charges on its stores' landline telephone bills during each of the past 4 years. The telecommunications expense management company obtains approximately 90 percent of the billing credits it requests when it seeks to cancel services that have been crammed onto the stores' landline telephone bills.

On multiple occasions, and as recently as 2010, the retail chain has asked its landline telephone service providers whether they can implement a universal block to prohibit all third-party vendors from placing charges on any of the company's stores' telephone bills. AT&T has told the company that it would be difficult or impossible to implement such a universal blocking request.

IV. Nonprofit Organizations

*Hospital System*²³ A large, nonprofit hospital system with locations in several states told Committee staff that it has battled cramming on its landline telephone bills for several years. For example, it incurred \$800 worth of crammed charges on just one of the many telephone bills it received in March 2011. The hospital system employee who deals with telephone billing has contacted the Missouri Attorney General's office and the hospital system's telephone companies for assistance with cramming.

The hospital system employee who deals with telephone billing periodically spends three consecutive days identifying and trying to cancel crammed charges. When she recently tried to cancel crammed charges that one third-party vendor placed on four different lines for electronic facsimile service, the third-party vendor claimed that the only people who could cancel the billing were the people who the vendor claimed had ordered the service on each individual line. Other third-party vendors have taken that same position in the past. This has left the hospital system employee uncertain what she can do to cancel the charges because the names of the people who the vendors claim ordered their services are not names of employees of the hospital system. The telephone companies that provide service to the hospital system have stated that they "have no control over" the charges that get crammed onto the hospital system's landline telephone bills.

The hospital system employee sometimes finds it impossible to contact the third-party vendors that place charges on its bills. And even when she succeeds in canceling an unauthorized third-party charge, she often cannot obtain full billing credits for past months' charges.

²² E-mail message from food and beverage retail chain employee to Commerce Committee Staff (June 20, 2011); Committee staff telephone interview with food and beverage retail chain employees (June 16, 2011).

²³ Committee staff telephone interview with hospital system employee (Apr. 25, 2011).

V. Federal Government

*United States Postal Service*²⁴ Since late 2006, a telecommunications expense management company called ProfitLine has spent an estimated 1,500 hours identifying, canceling, and obtaining approximately \$110,000 in billing credits for more than 2,900 charges that have been crammed on telephone bills for Postal Service locations throughout the country. If the Postal Service had incurred each of the unauthorized charges for 1 year without canceling them, the Postal Service would have paid almost \$550,000 for the unauthorized charges. The crammed charges included charges for services such as voice-mail, e-mail, electronic facsimile, online backup, web hosting, tech support, search engine optimization, photo storage and printing, identity theft protection, diet plans, credit counseling, digital music, and video downloading. The third-party vendors that have crammed charges on the Postal Service's telephone bills include defendants in past FTC and state law enforcement cases.

The Postal Service's telecommunications expense management company told Committee staff that the number of unauthorized third-party charges appearing on the Postal Service's telephone bills is increasing rather than decreasing. The company sometimes succeeds in stopping particular third-party charges on one line and then sees the same charges appear the next month on other lines in the same Postal Service location. The telecommunications expense management company does not believe that any Postal Service employee used any of the services that the company identified as a crammed service. When the company has asked third-party vendors to state the names of the Postal Service employees who supposedly authorized particular third-party charges, the vendors have sometimes stated the names of famous people such as Janet Jackson.

The Postal Service receives telephone service from dozens of different telephone companies. During the past 5 years, at least thirty different telephone companies have sent bills to the Postal Service that contained at least some crammed charges. Some of the Postal Service's contracts with telephone companies state that third-party billing must be restricted from the Postal Service's telephone bills. Notwithstanding that contractual provision, some telephone companies have told the Postal Service that they do not have the ability to block third-party charges from appearing on the Postal Service's telephone bills. Other telephone companies have said that they will attempt to block the charges but are not able to block all of them. A Postal Service employee reported that Granite seems to be able to stop third-party charges from appearing on the telephone bills that the Postal Service receives from Granite.

*United States Navy-San Diego*²⁵ Since 2007, the United States Naval Computer and Telecommunication Station in San Diego, California ("NCTS-SD") has identified and canceled hundreds of crammed charges on the landline telephone bills it processes for the Navy in the San Diego region. NCTS-SD estimates that the bills it processes currently contain approximately \$300-\$600 worth of crammed charges per month. Those figures represent a decrease from previous years, including 2009, when the telephone bills contained approximately \$11,000 worth of crammed charges in one quarter. The crammed charges have included charges for voice-mail and online backup services.

Although NCTS-SD thinks it is possible that Navy employees may sometimes knowingly or inadvertently enroll their individual telephone extensions in third-party services, Navy employees whose individual extensions have incurred third-party charges often state that they have never heard of the services for which their lines are being charged. In addition, certain unauthorized third-party charges have sometimes appeared on consecutively-numbered telephone extensions which led Naval personnel to believe that those charges were fraudulent rather than the result of Naval employees enrolling their telephone numbers in third-party services.

When NCTS-SD employees contact billing aggregators to dispute third-party charges, they request blocking of third-party charges on the particular telephone lines that incurred the disputed charges. Nevertheless, those same lines sometimes

²⁴ Committee staff telephone interview with United States Postal Service employees (Apr. 4 and 6, 2011); Committee staff telephone interview with United States Postal Service employees and telecommunications expense management company employee (May 12, 2011). Part of the information regarding the United States Postal Service's experience with cramming comes from data and documents that the Postal Service provided the Commerce Committee on May 2 and May 12, 2011 in response to a letter that Chairman Rockefeller sent to United States Postmaster General and Chief Executive Officer Patrick R. Donahoe on April 13, 2011.

²⁵ Committee staff telephone interview with United States Navy personnel (May 2, 2011). Part of the information regarding the United States Naval Computer and Telecommunications Station-San Diego's (NCTS-SD) experience with cramming comes from data and documents that NCTS-SD provided the Commerce Committee on April 27 and 29, 2001 in response to a letter that Chairman Rockefeller sent to United States Navy RADM Tom Copeman on April 4, 2011.

incur new third-party charges from different third-party merchants in subsequent months. AT&T has told NCTS-SD personnel that AT&T cannot block third-party charges from appearing on the Navy's telephone lines.

NCTS-SD believes that the third-party charges that have been billed to Naval central office trunk lines must be "100 percent fraud." Naval personnel who use the Navy's telephone services do not know the telephone numbers associated with the central office trunks. Those numbers are unpublished, and they never appear on caller identification records because they are not connection points for telephone calls.

VI. State and Local Governments

*Tyler, Texas*²⁶ The City of Tyler, Texas sent Chairman Rockefeller a letter regarding its experience with cramming on its landline telephone bills. The city discovered in February 2009 that it had been crammed by at least ten different vendors for as long as 26 months.

In February 2009, a city employee e-mailed AT&T a list of the unauthorized charges and stated that she had "spent hours calling and getting cancellation confirmations and retroactive credits to the tune of \$1,500." An AT&T Senior Account Manager replied by stating that he realized that cramming was a problem but could not do anything to help the city deal with it. Specifically, the AT&T employee said:

Neither myself or my team can do anything to resolve these for you and this isn't the first time we've been asked. This is a common problem with big accounts with lots of employees. Everyone has to fight these. My former account Dallas County would have 20-30 per month and there is no easy way to resolve them except the way you are doing it. I wish, I really wish there was some way we could help but there is not.

I checked on this and was not able to get any good ideas on how to resolve it. I would recommend calling the AT&T billing number to see if they could give you any info or even stop the billing on these two items. I wish I could have been some help but this is the best I could come up with.

More than two years later, and after complaining to the Texas Public Utility Commission, the City of Tyler continues to identify crammed charges on its AT&T landline telephone bills. The city's letter to Chairman Rockefeller states that "[t]he soft costs of man-hours within all levels of government wasted to identify, confront and track these transactions must be staggering!" The city employee who deals with cramming sometimes has to use Internet searches and make multiple calls to try to dispute some of the crammed charges because the city's telephone bills do not always include telephone numbers for contacting some of the merchants that have placed unauthorized charges on the city's telephone bills. For example, she recently had to use Internet searches to find contact information for a company that charged the city \$99.95 for search engine optimization and a company that charged multiple city lines for directory assistance in multiple months.

*Los Angeles, California*²⁷ The City of Los Angeles told Committee staff that it has consistently incurred crammed charges on its landline telephone bills for years. Approximately three years ago, an outside auditor helped the city identify and cancel the crammed charges that had been appearing on the city's telephone bills. After the auditor completed its work, however, the city quickly began to incur new crammed charges.

For example, in February 2011, the city determined that ten different third-party vendors had been cramming charges on a city library telephone bill for services such as voice-mail, electronic facsimile, and meal planning services for as long as 31 months each. After the city sent a list of those unauthorized third-party charges to AT&T, AT&T provided the city more than \$5,100 in billing credits. City employees told Committee staff that AT&T is responsive in removing and providing billing credits for crammed charges when they notify AT&T about such charges. J.L.W.

In February 2011, the city requested that AT&T block all its lines from third-party billing because the city had "been getting a lot of 3rd party billing lately."

²⁶ Letter from City of Tyler, Texas to Senator John D. Rockefeller IV (May 27, 2011); Committee staff telephone interview with City of Tyler employee (May 12, 2011); Letter from City of Tyler to Texas Public Utilities Commission (Mar. 9, 2009) (enclosing e-mail messages exchanged between City of Tyler and AT&T) (produced to Commerce Committee by daData, Inc. without Bates numbers).

²⁷ Committee staff telephone interview with City of Los Angeles employees (May 26, 2011); E-mail message from AT&T to City of Los Angeles employees (Feb. 8, 2011).

AT&T responded by telling the city that it could not block its lines from third-party billing. AT&T stated in an e-mail to the city:

We are not able to do a “blanket” block including all carriers because we have to be un-biased and provide billing services for these companies. Besides there are new companies popping up all the time so it will still require some ongoing auditing by the City.

However, I will be happy to help you with the unauthorized Third Party Billers blocking on a case by case basis. All that I need is the BTN [billing telephone number] and the unauthorized charge information such as the name of the service and the amount so that I can locate the charge on your bill.

Once I receive your request, I can recourse the charges back to the carrier, report the incident, and request the blocking for future charges. I can continue following the same process that I did for [city employee's name] by blocking all WTN's [working telephone numbers] associated with each BTN reported.

*Chicago, Illinois*²⁸ The City of Chicago told Committee staff that it continues to incur some crammed charges on its landline telephone bills despite its requests for AT&T to block all third-party charges. In July 2010, the city's telecommunications manager e-mailed AT&T to state that the city's July 2010 invoice contained the same unauthorized third-party charges that the city had disputed for the past year as well as new unauthorized third-party charges.

An AT&T Business Solutions Customer Service Manager e-mailed the city in June 2010 to state that AT&T's “[s]lamming and [c]ramming protection is not 100 percent guaranteed to catch all third party billing,” “[u]nfortunately, from time to time a third party biller may slip through,” and “when it's identified we will recourse the charges.” In August 2010, another AT&T manager e-mailed the city to explain that crammers were figuring out how to get around the blocks:

After a review of some of the accounts, we determined that some Third Party Billing Service Providers are improperly using the Blocking Exception Indicator intended to bypass specified types of charges. This has resulted in inappropriate third-party charges being billed to AT&T End-User accounts subject to third-party bill blocking. A letter approved by legal is being sent to the Third Party Billing Service Providers strictly reinforcing the proper application of the bypass process to avoid sanctions by AT&T. AT&T is also pursuing other options to further protect the City of Chicago from receiving these charges and insure compliance by Third Party Service Providers.

*Michigan Department of Licensing and Regulatory Affairs*²⁹ An employee from the Michigan Department of Licensing and Regulatory Affairs sent Chairman Rockefeller a letter stating that the department regularly incurred crammed charges on approximately six of its landline telephone invoices for voice-mail, electronic facsimile, tech support, and identity protection services between 2006 and 2010. The department initially paid the charges because department employees assumed they were correct. The department employee who audited all of the department's landline telephone invoices later became suspicious when she noticed that many of the charges were for services that departmental employees already had available to them. The department was neither able to obtain refunds for all of the crammed charges nor able to get AT&T to block its lines from incurring additional crammed charges.

The Michigan state employee's letter to Chairman Rockefeller states:

Upon determining that these “services” were not being ordered or received by any of our staff members, I began to systematically dispute the charges every time I encountered them.

I quickly found that the third-party companies, or the companies they represented, rarely challenged my disputes. . . . Due to the fact that I never had any tangible proof that someone in one of our offices did not order the services, I was never able to get them to give me retroactive credits. The burden of proof seemed to be on our end instead of on the end of the third-party billers and the companies for which they billed. Since there had not been anyone in our department auditing and challenging these charges before me, they were usu-

²⁸ Committee staff telephone interviews with City of Chicago employees (May 25 and 26, 2011); E-mail messages from AT&T to City of Chicago employees (June 10, and Aug. 11, 2010).

²⁹ Letter from Michigan Department of Licensing and Regulatory Affairs to Senator John D. Rockefeller IV (May 5, 2011).

ally paid and [the department] was never reimbursed for any of these charges that occurred prior to my disputes. Throughout my time of handling these disputes, there was never a single time where one of the offices had to contact me because a needed service billed on their AT&T account by a third-party company had been disconnected. . . . I was never able to get AT&T to put blocks on our accounts to stop third-party charges, but I always asked the third-party billers in my disputes to block charges on their end from being charged on the line after the initial claim. They usually claimed to do so and I never saw a third-party charge on the same line again after a block was in place.

*Los Angeles County, California*³⁰ Los Angeles County, California sent Chairman Rockefeller a letter explaining that, since November 2009, the county has received more than \$306,000 in billing credits for past charges that had been crammed onto its AT&T landline telephone bills. County employees have spent more than 125 hours dealing with cramming since November 2009. After the county implemented a new billing system that enables it to see greater detail on its landline telephone bills, the county discovered thousands of instances of cramming for services such as voice-mail, identity theft protection, privacy, and debt-related services. The county canceled all such services and requested that AT&T block third-party charges from appearing on its telephone bills. The county does not believe that county employees were using any of the services it canceled because no county employees have inquired about their loss of access to the services since the county canceled them. The county continues to incur some crammed charges on its landline telephone bills.

*Orange County, California*³¹ Orange County, California has battled cramming on its landline telephone bills since 2001. For some period of time, county employees spent “upwards of 60 labor hours a month” dealing with 100–300 instances of cramming, or approximately \$3,000 worth of crammed charges, per month. Many or most of the crammed charges were for services that the county’s telephone systems already provided. The county’s routine practice was to contact AT&T to obtain contact information for the third-party vendors that had crammed charges onto its bills. In most instances, the county ended up refuting the charges via AT&T because the county was not able to contact the third-party vendors to request billing credit. In 2008, after several months of negotiations, AT&T agreed to block third-party charges on the county’s telephone bills. Even with blocking in place, the county continues to incur a small number of crammed charges and spends approximately 5 hours per month addressing those charges.

*Houston, Texas*³² The City of Houston, Texas currently identifies approximately ten crammed charges on its landline telephone bills each month for services such as photo storage, music download, and voice-mail services. In previous years, the city identified as many as fifty crammed charges per month. The city has incurred crammed charges on telephone numbers for facsimile lines and operations lines that are not published and are not assigned to individual employees.

City of Houston employees review the city’s numerous individual bills each month and contact the billing aggregators to cancel and request billing credit for the unauthorized third-party charges they identify. They also send lists of the unauthorized third-party charges to AT&T to inform AT&T that the city will be deducting the cost of the unauthorized third-party charges when it pays its AT&T bills. Based on their communications with AT&T, city employees do not believe AT&T can block third-party charges from appearing on the city’s telephone lines. For example, an AT&T service representative e-mailed city employees in January 2009 to state that AT&T had provided the city \$4,200 worth of billing credit for unauthorized third-party charges but stated:

Just a reminder this will not STOP the charges in order to do that you will need to call the companies that are billing to do that, which you will need to do. All I am doing is sending the charges back to the companies that billed them saying that they were unauthorized.

*St. Louis, Missouri*³³ Between October 2009 and February 2010, the City of St. Louis, Missouri identified approximately 360 instances of cramming on its landline

³⁰ Letter from County of Los Angeles Internal Services Department to Senator John D. Rockefeller IV (May 23, 2011); Committee staff telephone interview with County of Los Angeles employees (May 18, 2011).

³¹ Memorandum from Orange County Executive Office to Commerce Committee Staff (June 14, 2011).

³² Committee staff telephone interview with City of Houston employee (June 3, 2011); E-mail message from City of Houston employee to Commerce Committee staff (June 3, 2011).

³³ Committee staff telephone interview with City of St. Louis employee (May 20, 2011); E-mail message from City of St. Louis employee to Commerce Committee staff (May 25, 2011).

telephone bills for services such as voice-mail, diet plans, electronic facsimile, celebrity tracking, and identity theft protection.

An employee in the Controller's Office became particularly suspicious about the legitimacy of the third-party charges when she noticed that some of the charges appeared on Controller's Office lines. She then discovered numerous complaints on the Internet regarding the third-party vendors that had placed charges on the city's telephone bills. She called some of the city employees whose lines were being charged for third-party services, and the employees told her that they had not heard of the services for which their lines were being charged. She believes that her subsequent request for AT&T to block the city's lines from third-party charges has reduced the amount of cramming on the city's telephone bills.

*Tulare County, California*³⁴ In September 2009, an outside consultant helped Tulare County, California identify more than 60 charges that had been crammed on its landline telephone bills for services such as voice-mail, identity theft protection, and electronic facsimile services. Some of the charges had been recurring for more than 3 years. The county obtained approximately \$11,000 in credits for the unauthorized charges. A county employee who worked on the issue believes that was "only the tip of the iceberg" with respect to the county's experience with cramming.

Appendix B

APPENDIX B			
Sample List of Confirmed Victims of Cramming			
Private and Public Companies			
Telecommunications & IT AT&T Adobe Systems CACI CSC Casa Grande Internet Data Business Systems, Inc. Dell Fiserv GTECH GX5 Hewlett Packard IBM/Lotus Development Juniper Networks Level 3 Communications Microsoft Sales Force Xerox Tourism American Airlines AmeriTel Inns Avis Best Western Courtyard Marriott Econolodge Enterprise Rent-A-Car H Hotel of Midland, MI Harrah's Holiday Inn Express Holiday Lodge in Grass Valley Marriott Quality Inn Residence Inn Tharaldson Hospitality TownePlace Suites Travelodge	Financial, Insurance, and Investment Services AllianceBernstein Allstate BBVA Compass Bank of America Bank of New York Bank of the Ozarks Bank of the West Capital Group Capital One Chubb Citigroup Citizens Bank Comerica Bank Commerce Bank Deutsche Bank Federal Reserve Bank – St. Louis Fidelity Freedom Financial Bank Genworth JP Morgan Chase Key Bank M&T Bank Massachusetts Financial Services Co. MetLife Morgan Stanley Mountain State Blue Cross Blue Shield Nationwide OneWest Bank PNC Bank People's United Bank Progressive Regions Bank State Farm TowneBank	Financial, Insurance, and Investment Services, cont'd Travelers U.S. Bank Visa/Inovant Wells Fargo Zurich Financial Services Group Healthcare & Pharmaceutical Amedisys Home Health AmeriPath Bright Now! Dental Cardinal Health Centene Coventry Health Care First Health Services Fresenius Medical Care LabCorp Magellan Health Services MedImmune Pfizer Philips Healthcare Sanofi Shield Medical Laboratory Siemens Healthcare Diagnostics Surgical Care Affiliates Takeda Pharmaceuticals Toshiba Medical Systems ValueOptions Real Estate CBRE Coldwell Banker D.R. Horton Equity Office Properties Hubbell Realty	Manufacturing 3M Aggreko Ashland Avery Dennison BASF Baker Hughes Carrier Corp. Clorox Cody Oil & Gas Cooper Industries Devon Energy Energy Absorption Systems Farmland Industries Frito-Lay General Dynamics Georgia-Pacific Hess Oil Ingersoll Rand John Deere Lockheed Martin Michelin Molex Northrop Grumman Philips Electronics Raytheon Rexel Richmond Construction Enterprises Sonepar Sonoco Textron Toyota Tyson Foods Valence Technology Wacker Chemical

³⁴ Committee staff telephone interview with Tulare County employee (June 3, 2011); E-mail message from Tulare County employee to Commerce Committee staff (June 3, 2011).

APPENDIX B Sample List of Confirmed Victims of Cramming			
Private and Public Companies			
Media Boston Globe Phillips Broadcasting Providence Journal Viacom Warner Brothers Washington Post Transportation and Utilities AAA Southern New England Ben Franklin Transit Consumers Energy Entergy Independent Container Line Maersk National Grid Pacer International Penske Truck Leasing Questar Corp. Sabena Airline Training Center U-Haul United Van Lines Valero Energy YRC Worldwide	Retailers and Wholesalers 7-Eleven Aaron's, Inc. Ahold (Stop and Shop) AutoZone Barrett Turbine Engine Co. Bashas' Grocery Stores Baskin Robbins Best Buy Blockbuster Brown Shoe Co. Burger King C&S Wholesale Grocers Charming Shoppes Circle K Connect Wireless Cracker Barrel CVS Domino's Pizza Family Video Ferguson Enterprises Food Lion Fred Meyer GameStop Gap George Weston Bakeries Hagemeyer Hannaford Harris Teeter Hemispheres Home Depot JCPenney Jones Apparel Group Kmart Kohl's Krispy Kreme Kroger	Retailers and Wholesalers, cont'd Limited Brands Lowe's Macy's McDonald's Menards Mercedes-Benz Corporate Office Napa Auto Parts Nike O'Reilly Auto Parts Office Depot Outback Steakhouse Pepsi Pizza Hut Polo Ralph Lauren Popeyes Publix Quizno's Subs Ridley's Food and Drug Rite Aid Sam's Club Schlotzky's Deli Schnucks Sheridan Coca-Cola Sony Staples Starbucks Supervalu Swire Coca-Cola Taco Bell Target Thomasville Top Notch Produce, Inc. Turkey Hill Mini Market Wal-Mart Wilson Sporting Goods	Miscellaneous Service Firms Bally Total Fitness Dex One Epic Media Group Jenny Craig Just Jymnastics Kelly Services Laidlaw Education Services MSC Software Meineke MENTOR Network Mirror Copy, Inc. OCE-USA, Inc. Parsons Platte River Builders Reed Business Information Rollins, Inc. Source Office Suites Strick Lease Sweetman Construction Thermo Fisher Professional Service Firms Cravath Swaine & Moore Ernst & Young H&R Block Harris Group CPAs Huddleston Bolen Marsh McLennan Moody's O'Melveny & Myers Orrick Herrington & Sutcliffe Perkins Coie

APPENDIX B Sample List of Confirmed Victims of Cramming			
Healthcare and Hospital Systems			
Cedars Healthcare Center Children's Healthcare of Atlanta at Scottish Rite Coalinga Regional Medical Center Crestwood Behavioral Health, Inc.	Doctors Hospital of Springfield, MO Great River Medical Center Hendry Regional Medical Center Intermountain Medical Center	Lifespan Memorial Medical Center of Port Lavaca Metamorphosis New Mexico Pioneers Memorial Hospital of Brawley, CA	Rehab 2000 South Mississippi County Regional Hospital Summer Meadows Nursing Home of Longview, TX
Nonprofit Organizations			
Banner Health Centura Health Child Development Center of Natrona County, WY Covenant Health Eagle River, CO Fire Protection District Goodwill Industries Grand Island, NE Area Chamber of Commerce	Greater Tallahassee Chamber of Commerce and Economic Development Council of Tallahassee/Leon Immanuel Lutheran Church of Eden Prairie, MN Jackson Feild Homes Jackson Park Hospital Foundation	Kaiser Foundation Kaiser Permanente MedStar Health Partners HealthCare Ronald McDonald House Sandia Presbyterian Church Sisters of Mercy Health System Texas Health Resources	Twin Cities Community Voice Mail Utah State Democratic Committee Valley Baptist Health System Washington State Migrant Council Wildwood Presbyterian Church

APPENDIX B Sample List of Confirmed Victims of Cramming			
Colleges and Universities			
Adams State College Art Institute of Philadelphia Central Texas College Chesapeake College College of Idaho Colorado State University Evergreen State College Fort Lewis College	Gonzaga University Iowa State University Kellogg Community College Manhattan College Maricopa Beauty College Michigan Technological University Northern Arizona University Pierce College	Pima Community College Portland State University Red Rock Community College Trinidad State Junior College University of Arizona University of California-Irvine University of Colorado University of Iowa	University of Maryland University of Northern Iowa University of Oregon University of Texas System University of Utah University of Washington Westminster College Whatcom Community College Wofford College
Primary and Secondary Schools			
Anne Arundel County Schools, MD Boces-Brewster Central School District, NY Brighton Area Schools, MI Cambridge Preschool Academy, AZ City of Elizabeth School District, NJ	Davis County School District, UT Deer Valley Unified School District, AZ Harrison School District, CO Highline School District, WA Latin American Montessori Bilingual Public Charter School, DC	Loudoun County Public Schools, VA Pinecrest Schools, CA Port Arthur Independent School District, TX Rising Sun Montessori School, AZ	St. Vrain Valley School District, CO Tahoma School District, WA Western Mennonite School, OR Woodstock Community Unit School District 200, IL

APPENDIX B Sample List of Confirmed Victims of Cramming			
Federal Agencies			
Bureau of Public Debt Bureau of Reclamation Department of Defense Department of Veterans' Affairs General Services Administration	IRS Mineral Management Service NASA National Park Service United States Postal Service	U.S. Navy Kingsville Naval Air Station U.S. Naval Computer and Telecomm. Station-San Diego U.S. Navy Recruiting Station	U.S. Air Force Ellsworth Air Force Base F.E. Warren Air Force Base
State Governments			
Arizona Colorado Idaho	Iowa Maryland Michigan	Minnesota Nevada New Mexico New York	Pennsylvania Rhode Island West Virginia
Local Governments			
Cities Alexandria, VA Chicago, IL Elmhurst, IL Houston, TX Jacksonville, FL Los Angeles, CA Miami, FL Mount Vernon, NY New Philadelphia, OH New York City, NY Phoenix, AZ Portland, OR Prineville, OR	Cities, cont'd Salt Lake City, UT St. Clair Shores, MI St. Louis, MO Surprise, AZ Thornton, CO Tyler, TX Towns Athol, MA Burlington, MA Cohasset, MA Flower Mound, TX Grafton, MA	Marshfield, MA Orange, MA Raynham, MA San Felipe Pueblo, NM Saugus, MA Yarmouth, MA Counties Adams County, CO Bear Lake County, ID Benton County, OR Broward County, FL Davis County, UT Grant County, WA Hancock County, IA	Counties, cont'd Hennepin County, MN Iron County, UT Kitsap County, WA Los Angeles County, CA Multnomah County, OR Norfolk County, MA Oklahoma City, OK Orange County, CA Pierce County, WA Polk County, IA Prince George's County, MD Valencia County, NM Yuma County, AZ Yavapai County, AZ

Appendix C

APPENDIX C					
SAMPLE LIST OF THIRD-PARTY VENDORS (A-I)					
10-10-123Americatel 123 Voicemail 1-800-321-CONTACT 1800CallLess 1Rate.com 1SmartPage.com 247 Tech Service 800-321 Contact 800mailbox 877 in My Zip 888 My Zip Local A+ Retailer Abs-Con Telecom Access Local Access Savings Access Voice Acclaim Games, Inc. Accucharge aDigitalVillage.com Advance Benefits, Inc. Advanced Feature Group Advantage Plus Advantage Telecom Affordable Long Distance AGM Telecom Corp. Agora Solution Airwave Call Manager Allegra Enterprise AllVoicemail AltNet, Inc. Ambonet.com Amerbiz.com, LLC America Net, LLC American Business IT Solutions American Communications American eVoice American Phone Service American Premium Warehouse	American Roaming Net American Select American Telecom Systems Americatel Amerlinks.com, LLC Ameritel Ametex Andiamo Telecom Anvil Computer Services APEX Business IT Solutions Archer Technical Service ATI Atlas Communications ATN Access Internet Solutions B2B Advantage Best Click Advertising Best Telco, Inc. Best Web USA, Inc. Better Benefits Org. Big City Yellow Pages Billing Services of America BillViaPhone Biz Team Bizopia Biz-Tel Bizfinders.com Bizlinks.com Bizrectory Blabble Networks Black Diamond Web Hosting Blizzard Entertainment Blue Dog Online BlueLight Internet BLVD Network, LLC Brazoria Long Distance Brilliant Digital Entertainment Broadcasting Communications brring.com Business Connect America	Business Direct Business Discount Plan Business Network Long Distance Business Options Business Services Online Business to Business Business Values Online Call Depot Call Direct, Inc. Call for Less Call Plus Calling 10 Calling 10 15 15 800 Callwave Canopco Incorporated Cascade Webhosting Cass Financial CBS Yellow Pages CelebNewsAddict Celebrity Tracker, LLC Central Telecom Long Distance CEO Telecom Cheap2Dial Telephone Christian Commerce Kit Christian Living Ministry Citizens Telecom City Celebrity City Commerce Services City Pin Point Clear Choice Communications Clear World Communications ClickIntell.com Coast International Coast to Coast Photo Coast to Coast Voice Comtek Direct, LLC Communicate Systems Communication Junction	Communications Network International Comnex Computech 123, Inc. Comtel Communications Concorde Telephone Company Connect Direct Connect to Purpose Connection Backup Service, LLC Consolidated Communications Consumer Access Consumer Telcom, Inc. Contact Message System Constr Credo Long Distance CSP Telecom Custom Teleconnect Cybercom Central Cybertube TV dirtbootcamp.com, LLC DDD Calling Design One Dialaround Enterprises, Inc. Dial-Around Telecom dirtbootcamp.com, LLC Diamond Debt Solutions Digital Access, LLC Digital Voice Mail Directory Billing Services Directory Billing, LLC Directory Services Group Discount Business Services, LLC Discount Dialing Discount Long Distance Discount Plus	DUS Long Distance E Web Zone Easy Internet Advertising Elbit Search Solutions, LLC Elbit.net Ebusiness Services Group Eco Travel Alliance Econocall e-Harmony.com E-Leader Group, LLC Elite ID Monitor, Inc. Elmundo Conecto Email Bundle, LLC Email Discount Network Emergency Road Voice Empire Voice Systems Employee Notification Enhanced Bill Solution Enhanced Long Distance Enhanced Voicemail Environmental Impact Equal Access Plus Equalnet Escalate Solutions, LLC E-Secure Services Eufora Capital Everclear Internet Evercom Systems Evoice Service EWebZone EZ Webmasters EZ Websource eZip Search EZPhoneBill EZSavr Family Contact 911 Family Talk fastwebpages.net Fetch Unlimited	Find Locally First Fairfield First Rate Voice Svc FirstCharge Flashweb Flat Rate Long Distance Fone Right, Inc. Fonetel ForeverGlam fraudalertguard.com, LLC fraudwatchguard.com, LLC FreedomCall, Inc. FrescaFone Fresh Mix Media Gaia Interactive Galaxy Generation Telecom Global Airwave Communications Global Crossing Global Tel Link GoGoFone Great Biz Sites Green Initiatives GreenTreeData Guard Dog ID GuardDog Email Alert Headwind Media Health Care Partner Homebridge Security HostaWebsite.biz I.C.O.E. IBA-Services IC Solutions iCloser Web Services

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APPENDIX C					
SAMPLE LIST OF THIRD-PARTY VENDORS (I-S)					
iCSolutions iD Lock Pro Ideal Savings Ideal Savings Now Ideal Voicemail Identity Defenders, LLC iD Lifeguards iD LockPro iDS Websites.com IE Communications ig.com iMail Planet Implied Services iDemand Solutions Infinity Networks Info Dial USA Info Source USA infoBilling InfoCity Instant 411, Inc. Integrated Services Integritel Intekom Messaging, LLC Intefum GmbH Interconnect Network Intermedia Messaging Services International Telcom Internet Advertising Specialists Internet Business Advisors Internet Business Association Internet Christian Kit Internet Commerce Co. Internet PB Internet Yellow Pages Jartel Jelly Jam Radio Jubilant Internet Radio	Jungle Mail, Inc. Juno Online Services K2 Network K2 Corporation Key Club Save KeySecure Inc. Kool Telecom Latino Communication Lattice Incorporated LaurenTel LCR Telecom LD Consolidated Bill LDC Telecommunications Least Cost Routing Legacy Long Distance Liberty Online Life Access.com LifeShield, LLC Lighthouse Alarm Live Deal, Inc. Live on the Net.com Local Area Yellow Pages Local Biz USA Local Connect Service Local Directory Pages Local Edge Marketing Local Internet Listing Local Online Listing Local Online Services Local Point Biz Local Search Marketing LocalDirectoryPages LocalYellowPagesListing.com Long Distance Access Long Distance AM Long Distance Charges Long Distance Depot Long Distance Mart Long Distance Services Long Distance Voice	Long Distance Wholesale Club LowCostBilling Lucky Dog Phone Company Lunatic Voice MainStreet Telephone Margate Entertainment Matrix Telecom McLeod USA MDVM Connect, LLC Media One Online Media Telecom, LLC Members Edge Mercury Telnet Merline Tech Mix Networks, LLC Monthly Ringtines, LLC More Yellowpages, Inc. Mosaic Telecom Multiline Long Distance musicct.com, LLC MX Media Solutions, LLC My EZ Diet My Info Guard My Local Reach, Inc. My Practice My Telebill My Voicemail Club My Voicemail Network My247Call.com MyBillingGuys MyBillingServices MyEmailCelfender MySiteOnline.com, Inc. MyTeleservices MyTouchBook.com N.E.T. National Access Long Distance National Online Services, Inc. National Search Directory National Services Online National Telecom USA	National Toll Free Nationally Local Nations Email Plus Nations Voice Plus Nationwide Assist Nationwide Long Distance Nationwide Voice Messaging NeedTheInfo Net Page Now NetGen Connect, LLC Network Assurance Network Service Bill Network Telecom Network Telephone Services NetZero, Inc. New Access Communication New Century Telecom New Link Network Nicom Energy Services Norrisdown Telephone North American Intelcom North State LD Office Arrow, LLC Official Small Business Association OLS, Inc. One Backup, LLC One Email A Day One Link Communications One Step Billing Onelink OneSource Networks Online Biz Listings Online Business Association Online Business Network Online Entrepreneur	Online Green Pages Optimum Voicemail Orbit Telecom OSP Communications Pacific South Telecom Past Due Pro, LLC Pathway Profits Pathway Solutions Patient Portal Connect Paytel Northwest PBA Services, Inc. Peak Communications People PC Perfect World Entertainment Personal Contact Solutions, LLC Personal Network Solutions Personal Voice Photo Cubbie Platinum Benefit Powerlist Online Precision Web Hosting Prefer Discount Plan Preferred Billing Preferred Long Distance Premier Telecom Premium Long Distance Premium Voice Mail Primus Priority ID Privacy Solutions Privasafe Pro Credit Monitor Pro Credit Track Professional Resources Group Promotion Tech Protocol Pureplay.com Quasar Communications Quick Web Pages	Radio on my PC Risk Network RCN RealSmartMail, LLC Reduced Rate Long Distance Regional Commerce Services Reliance Telephone Reliant Communications Rescue My Credit Residential Email Residential Feature Group Residential Photo Residential Services Residential Voice Mail, Inc. Resource Services, Ltd. Restaurant Listings Ridley Telephone Roadside Pal Rox Telecommunications, LLC Rocket Communication Services Rockwood Telecom Rodeo Telecom RDN Enterprises Safe-T-Comm, LLC savoncalling.com SBA Online SBO-Online.org Scott Communications Search Local, LLC Search Marketing Services Secure Marketing, LLC Selected Options Selected Services, LLC Seriously Cool Radio Service Bureau Network Service Group International Shared Networks Sharenet Communications Sierra Tel Long Distance Signature Market News

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APPENDIX C

SAMPLE LIST OF THIRD-PARTY VENDORS (S-Z)

<p>SILV Communications Simple.net Skynet Small Business Advertising Small Business AM Small Business Association Small Business Bill Small Business Organization Small Business Tech Smart Dial, Inc. SME Marketing SOHO Management Solo Communications Stand Up Solutions, LLC Star Sleuth, Inc. Startec Global Communications Store Front Riches Streaming Flx Super Book Yellow Pages, Inc. Super Saver Pages Supreme Savings Now Supreme Voicemail Sure Connection Long Distance SVM Voicemail Taconic Telephone Corp Tahiti-Econocall Talent and More, LLC Talk Communications TCPB Marketing Techsupportoncall.com Tel 3 Telco Billing Telco Partners Tele Dias Communications Telecharge Ince Resource TELCircuit Telecom Access Network, Inc.</p>	<p>Telecom Service Center, Inc. Teleconnect Services TeleDias Communications, Inc. TeleGlobe Teleuno Telpoint Marketing, LLC Televien Telvost TeriCom Web Hosting Texcom USA Texnet Internet Services Text Savings, LLC TFL Interstate Long Distance The Easy Yellow Pages The Green Yellow Pages The Guys Thank You The Recipe Squad The Stars Radio The US Yellow Pages The Web Connection Three Rings Design, Inc. T-netix Today's Resources, Inc. Toll-Free Voice Messaging, Inc. Top Site Optimization Professionals, LLC Total i Protect Total Internet Radio Total Protection Plus Touch 1 Long Distance Trake Telephone Transcendent Corp Travel Pal Assistant Traveller Info Services Triple Three, Inc. Triton Global Business Trivoice International</p>	<p>TXNET Inc. UltraWebsite.com Unique Web Listing United American Technologies United Communications Link United ProSolve United Telecom United Telemanagement United Voice Mail United Voice Messaging UnitedTel, LLC Universal Call Plan Universal Payment Universal Voice, LLC Unlimited Access International Unlimited Long Distance US Communications US Credit Find, Inc. US Link Long Distance US Music Find US Online Listings US Select US Telecom Long Distance US Yellow Pages USA Business Directory USA Photo House USA Voice Mail USA Yellow Pages USB Organization USP Communications Value Added Communications Vanguard Defenders Vartec Telecom Veeva VeriKadd Technologies Vera Telecom Vidafone</p>	<p>Video Professor Online VIPCelebrity Access Vista International Voice Mail Services, Ltd. Voice Power Telecom Voice Pro Plus Voicelink International Voicemail Club, Inc. Voicemail Direct USA Voicemail Professionals Voicemail Resources Voicemail Solutions Voicemail USA Voicemailboxes.com voicemailtoday.com Voicenet Telephone Voicngress Vox Networks VoxTrail, Ltd. Watchdog Email Watchdog ID Web Oregon WebCityOnTheNet Webline Communications WebOneUSA, Inc. WebsiteOnDemand.com WebTVExtreme, LLC WebXites We-R-Games West Star Telecommunications Whiteforce Wilkes Long Distance Williams Communications WindSolutions, LTD Working Assets World Web Access World Web Pages</p>	<p>Worldcom Network Services WorldXChange WVM Network Xoom Telecommunications Xpedite Systems YAK America YCP Network Yellow Page City Yellow-page.net Your Online Services Your Product Bill YourBillingSolution Yourtopicalite.com YP Values YP.com ZIM Corporation ZipWeb Zoom-i-Net</p>
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Appendix D

APPENDIX D

Websites for daData-Related Third-Party Vendors That Offered
"Electronic Fax Service"

The CHAIRMAN. Although Congress and the telephone companies haven't been doing enough to protect consumers from cramming—our fault—I'm glad to say that some State and Federal law enforcement agencies have stayed on the job. We're going to hear from the Attorney General of Illinois, Lisa Madigan, who sits right there. And she's going to tell us how her office has filed more than 30 lawsuits against crammers.

And we're going to hear about a law that the State of Vermont passed recently to protect its citizens against cramming. A lot of other law enforcement authorities, including the Federal Trade Commission, the Federal Communications Commission, have filed lawsuits and shut down crammers.

But what they need to know is that crammers can come right back. They're ubiquitous. They're everywhere. Like all those little satellite alien space things. They just drift around, waiting to plop down onto a phone bill. But as we're going to hear today—and I'm sorry so long—when they shut down one crammer, new crammers appear to take their place.

So it's obvious at this point that voluntary guidelines are not going to solve this problem. It's also pretty clear that the case-by-case law enforcement approach is not going to work. There are just too many crammers out there, ripping off too many consumers. So it's time for us, I think, to do something more about it.

Say one more thing, there are about 300 million charges, mostly unauthorized, entered onto telephone bills each year, 300 million. And that's about—worth about \$2 billion, you know. So that's not a lot of money, except if you have to pay it. People living on the edge—1995, that's a lot of money. And again, all \$2 billion were not cramming charges, but most of them are.

We estimate there have been about \$10 billion worth of third-party charges on consumer telephone bills. We estimate that AT&T, and Qwest, and Verizon, have earned more than \$650 million, those three companies, from this themselves. That's pretty big money. That's pretty big money.

And so anyway, we've got a real problem here, and we're—we want to do the right thing, and we want to protect people, and that's the end of me, so I call on Senator Ayotte.

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Mr. Chairman. I want to thank you for holding this important hearing. I know that you and your staff have put a great deal of time and effort in preparing the investigative report that the Committee released today. I also want to thank those at the Federal and State levels who have pursued enforcement actions against those perpetrating this fraud on consumers.

I especially want to recognize my former colleague, Lisa Madigan, the Attorney General of Illinois, with whom I worked with when I was the Attorney General of New Hampshire. She has been very active in this field, and I welcome her here this morning.

For more than a decade, New Hampshire has actually had a framework for responding to the practice commonly known as cramming. When I served as the State's top law enforcement officer, I oversaw an active consumer protection bureau, as General

Madigan does, which included the publication of consumer protection sourcebook and brochures to provide individuals with information about how to protect against cramming.

Additionally, in New Hampshire, the Public Utilities Commission is also authorized to sign billing aggregators that were service providers found to be cramming or to ban them entirely from access to the telephone company billing apparatus to prevent further harm to consumers. As we continue to examine this issue and discuss how to best address it, we must not lose sight of the fact that cramming affects regular, hard-working Americans who are being scammed out of their hard-earned dollars.

As a former prosecutor, it's my intent to bring to justice the bad actors, but simultaneously, also recognize that there are legitimate businesses providing services to consumers. It is my hope that we will spend some time this morning talking about the prosecution of crammers, and how to best go after those defrauding the consumer. Without strict deterrence or fear of retribution for those scamming the public, we are certainly not adequately addressing this issue.

In addition to the witnesses from Illinois and the Vermont law enforcement, who we will hear from today—and I appreciate Mr. Burg being here as well—we should note that the FTC and the FCC also play a key role in fighting cramming by bringing law enforcement actions against bad actors regarding illegitimate charges on consumers' phone bills. Just yesterday, the FCC announced a notice for proposed rulemaking, which is intended to help consumers detect and prevent unauthorized charges. So there is ongoing action to help consumers protect themselves.

However, one of the issues I hope this committee will be addressing is whether those steps are sufficient to protect consumers and hold wrongdoers accountable. Given the clear importance of this issue and the urgent need to find workable solutions that protect the public, I very much appreciate the work that went into this year-long investigation.

I am disappointed that the findings were only released right before the hearing because I would have liked to have heard from our witnesses more of an analysis of what his or her view is of the report. So going forward, I hope that all of you will feel free to augment the record with your perspective on the year-long investigation that was conducted by this committee.

I appreciate each of the witnesses for sharing his or her expertise and for helping the Committee better understand this important issue affecting so many Americans.

And as a follow up to this hearing, I also believe it is necessary that we do hear directly from local exchange carriers, aggregators, as well as the Department of Justice, FTC, and FCC, who have been prosecuting and imposing fines on those who conduct cramming. These additional perspectives on this report would provide insightful information as we address this very important issue on behalf of consumers.

I look forward to the hearing today and I want to thank each of you for being here. I yield back the balance of my time. Thank you.

The CHAIRMAN. Thank you very much, Senator. Shall we be kind, because we have Amy Klobuchar here? She has another hearing

she has to go to and Amy might like to say something, so, then, that leaves Mark Begich. And so we have to figure out——

**STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA**

Senator BEGICH. I'll pass. I'll pass, allowing Senator Klobuchar to have as much opportunity as she desires.

The CHAIRMAN. What a gentleman. Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much. Well, thank you, Mr. Chairman, and I would concur in what Senator Ayotte talked about with the leadership of you and your staff in this area. It has been very helpful. And in fact, our State's been taking this on, as Attorney General Madigan knows, not just at the federal level, but also at the State level 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.

And it's just one example of an industry practice that has cost consumers and businesses millions, if not billions, of dollars. I'll never forget the consumers that were standing there with us, and they were—I think one was a—they were a Lutheran minister and his wife. And of course, she had checked the bill, every tiny detail, and was able to discover that charge, which is not something I would do.

And so it is very hard for consumers to notice these charges because so often, they can be \$10, \$15, \$20, \$5, amounts that they would not normally notice on a larger bill.

And that's why, when you add it up, it becomes a big chunk of change. So I am one that believes that it shouldn't be up to the consumer to play detective, going over their phone bills with a magnifying glass every month.

I believe that phone companies and third-party aggregators need to crack down on crooks who are stealing from our citizens and our businesses. We need clear rules of the road that prevent this behavior. There have been good things about our deregulated market. It has led to innovation.

But there are also issues that we are seeing, like this one, where crammers have been exploiting this open market. So I applaud the commission for the rulemaking. I look forward to helping in any way I can. I look forward to hearing the testimony.

I'm sharing a hearing in Judiciary on the Violence Against Women Act, which I know the Chairman cares about very much. That's why I may not be here for all the questioning, but if I'm not, I will submit my questions on the record. Thank you.

The CHAIRMAN. Thank you much, Senator Klobuchar. My Vice Chairman, Senator Ayotte, is now going to make the next introduction.

Senator AYOTTE. Thank you, Mr. Chairman. It is my privilege to introduce the Attorney General from Illinois, Lisa Madigan, who will provide testimony today, who has been very, very active on going after crammers in her own State. And again, I've had the privilege of serving with her as Attorney General, so I know how diligent she is in protecting consumers. So thank you, Attorney General Madigan.

**STATEMENT OF LISA MADIGAN,
ATTORNEY GENERAL, ILLINOIS**

Ms. MADIGAN. Thank you, Senator Ayotte, Mr. Chairman, and distinguished members of the Committee. I appreciate this opportunity to testify. Today, I want to stress three points that draw on my eight and a half years' experience, investigating and bringing enforcement actions against phone bill crammers, as the Attorney General of the State of Illinois.

Number one, most consumers are completely unaware that their phone number can be charged almost like a credit card, so many consumers will never discover that there are unauthorized charges buried in their phone bill.

Number two, my office has yet to see a legitimate third-party charge placed on a consumer's phone bill.

Three, phone bill cramming is such a persistent and pervasive problem, I believe that the only effective solution is to enact legislation banning third-party charges on phone bills.

To give you an overview, Illinois individuals, businesses, churches, and government agencies have been filing complaints with the attorney general's office about phone cramming since 1996. In response, Illinois, as well as other states, and the FTC have taken a series of law enforcement actions. And when we did that initially, it did temporarily quell the problem.

However, we're seeing a very strong resurgence in the number of cramming complaints. Initially, the phone bill cramming scams that we saw were perpetrated primarily through telemarketers, especially in the years prior to the establishment of the National Do Not Call Registry. Recently, however, crammers, like many other illegitimate scams, have moved to the Internet.

Some Internet victims tell us that they have done nothing more than submit their name, their address, and importantly, their phone number in response to online offers for either a prize drawing, coupons, or free recipes. Eventually, of course, they learn that they have been crammed. Again, they did not know that they were buying anything at the time. And they did not know that, by giving their phone number, they were authorizing a charge on their phone bill. And so they're understandably puzzled, and quite frankly angered, when sometime later, they notice that their phone bill contains a charge for a product or a service that they didn't seek out, they didn't authorize paying for, and very importantly, they never used.

That's when some of the victims turn to my office for help. However, FTC data indicates that as few as 1 in 20 consumers that are

billed for third-party charges on their phone bills are even aware of the billing. My own investigations have revealed a similarly low level of consumer awareness.

In fact, throughout our investigations, we have learned that many victims have never visited the website of the vendor whose product or service they're being charged for. And worse, some of the victims don't even have access to the Internet.

Additionally, victims consistently tell us that they have never used the product or the service for which they were billed. Again, that is not a surprise when consumers never even knew they purchased anything in the first place.

For example, one case that my office handled—we managed to obtain the data on the more than 3,500 Illinois consumers who had been billed for Internet service and extended cell phone warranties. Most of the consumers we talked to did not know that they were being billed and none, none, of the 3,500 consumers had made a warranty claim or had used the Internet service. Our investigations consistently revealed that most phone crammers rely on deception.

However, others engage in outright fraud. For scams involving deception, the basic marketing strategy has remained the same throughout the years. Whether over the phone or on the Internet, the consumers is never clearly told they're making a purchasing decision, or that they'll be billed for the purchase on their phone bill, or that giving their phone number will authorize a charge on their landline phone bill.

In contrast with the scams involving deception, in which the victim participates in the transaction, albeit unwittingly, scams involving outright fraud don't require the victim to take any action whatsoever. This type of cramming is also referred to as phantom billing, where the purported consumer acceptance of the vendor's offers is completely falsified.

In a number of the telemarketing cases we've investigated, we've obtained the recorded phone conversations of consumers purportedly agreeing to an offer. The only problem is that the voices on those recordings are not the voices of the consumers who were billed. And while I'm on the subject of phantom billing, I should note that in another of our cases, a county coroner's office, a Steak 'n Shake restaurant, and my personal favorite, the public library's Dial-a-Story phone line, were among the 9,800 Illinois businesses billed for credit repair services, that even assuming credit repair services were legitimate, could only be used by an individual, obviously not by a business.

So I would argue to this committee that when an automated children's Dial-a-story phone line supposedly signs up for credit repair services, it is time to stop third-party billing. The bottom line is that, from the beginning, third-party charges on phone bills have been an open invitation to fraud and deceit. It has been a scam where vendors, billing aggregators, and carriers make significant money by consumers never noticing the cram charges on their phone bills.

I strongly support decisive legislative action on the state and federal level to ban the practice altogether. Again, I thank you for the opportunity to testify today and I'm happy to answer any questions you may have.

[The prepared statement of Ms. Madigan follows:]

PREPARED STATEMENT OF LISA MADIGAN, ATTORNEY GENERAL, ILLINOIS

Thank you, Senator Rockefeller and distinguished members of the Committee. I appreciate the opportunity to testify today.

Telephone bill cramming first emerged as a consumer problem in the 1990s, and continues to be a problem today. Based on my eight and a half years of investigating phone bill cramming in my capacity as Illinois Attorney General, I can safely say that most consumers do not expect that their telephone account can be used to bill for services and charges unrelated to their telephone service, and that their telephone number is their account number. Furthermore, the vast majority of consumers who are billed never use the products and services, and in many cases are unaware they are being charged.

Background on Telephone Bill Cramming Consumer Complaints

My Office's Consumer Fraud Bureau began receiving consumer complaints about unauthorized charges appearing on consumers' telephone bills in 1996. In the early years of the problem, we saw monthly charges ranging from \$9.95 to as much as \$45.00 for products such as prepaid calling cards, voice mail service, credit repair services, a cell phone warranty, or a toll-free number (purportedly to provide free long distance service). Some services involved set-up fees of anywhere from \$9.95 to \$25 in addition to the monthly fees.

At first, phone bill cramming affected primarily residential telephone customers. Then unauthorized charges began appearing on the phone bills of small business, government, churches, and other non-profit entities in amounts ranging from \$19.99 to \$49.95 for items such as website design and hosting, search engine optimization, or online yellow pages listings.

These practices continue to evolve. In recent years, particularly since the creation of the National Do Not Call Registry in 2003, which has reduced telemarketing calls to residential phone numbers, we've seen an increase in complaints from consumers who were solicited online, as companies move to a new medium. As explained more fully below, online solicitations present a new set of challenges in our investigations of these cases.

Even as telephone bill crammers have shifted their focus from telemarketing to the Internet, the stories we hear from consumers have remained remarkably similar. Complaining consumers consistently deny all knowledge of the charges and products or services. In fact, they tell my Office that they have never even used the products or services. When a consumer files a phone bill cramming complaint with my Office, our Consumer Fraud Bureau sends copies of consumer complaints to the two main entities involved—known as the vendor, or the company selling the service, and the billing aggregator—and requests a response. In many instances, the entity that responds claims to have obtained authorization from the consumer for the charges, but will agree, as a gesture of good will, to remove the charges from the consumer's telephone bill and cease charging the consumer for the services.

Many consumers have reported to my Office that they experienced difficulty when they tried to remove the charges on their own—that they spent hours on hold or were given the runaround when they attempted to obtain refunds for amounts already paid.

My investigations of vendors, which include obtaining information about the vendors from their billing aggregators, have routinely revealed deceptive sales pitches and high refund rates.

The bottom line is that most consumers who are currently being billed for third party charges on their phone bills are unaware they are being billed. If they do become aware, they cancel the service and attempt to obtain a refund, because they never intended to purchase the product or service, and they never used it. Some consumers discover the charges in the first few months, but some cramming charges can go undiscovered for over a year or two. Some consumers never notice these charges on their phone bills. This is due in part to the relatively small amount of the charges compared with the total phone bill amount, and the complexity of phone bills.

Mechanics of Third Party Billing

Vendors are the parties whose charges appear on consumers' telephone bills. They solicit telephone subscribers to buy their products or services, and then transmit their list of acquired customers to billing aggregators for further processing. The only piece of information that is needed is the consumer's telephone number.

Billing aggregators are the entities that act as the intermediary between vendors and consumers' local telephone companies. The billing aggregators enter into contracts with vendors to pass on their charges to consumers' telephone companies. The aggregators in turn have contracts with the numerous local telephone companies nationwide to place the vendors' charges on consumers' telephone bills.

The local telephone company collects the charges from the consumer, retains its portion of the charges, and remits the remaining portion to the billing aggregator, who retains its portion of the charges and remits the vendor's share to the vendor.

Both the aggregator and the local telephone company screen potential vendors before allowing them onto the billing platform.

My office's investigations of crammed phone bill charges reveal that both entities could be doing more to screen out problematic vendors, including taking a closer look at who is behind applications for access to the billing platform and more closely scrutinizing marketing materials and marketing methods, both proposed and implemented.

Products Billed on Landline Telephone Bills

The products have changed over the years, but they continue to be unwanted, unused, and often unnecessary. Early cramming complaints involved voice mail service, Internet service, search engine optimization, long distance calling cards, toll-free telephone numbers (purportedly used to obtain free long distance service), local singles matching services, and Web page design. More recently, we have seen cramming complaints about phone billed charges for credit repair, identity theft prevention and monitoring, business advice on how to start an online business, online photo storage, roadside assistance, online yellow pages listings, Internet service, e-mail service, and travel and restaurant discounts.

Some of these services are duplicative of services that consumers already have, so it stands to reason that the consumers would not have approved purchasing these duplicative services. Other services are available for free from other sources, such as photo storage and e-mail services. In any event, both my investigations and FCC data support findings of extremely low usage rates for these products and services. These low usage rates, less than 1 percent, indicate that consumers did not knowingly sign up for them.

Marketing Methods

Telemarketing and Third Party Verification

Initially, vendors marketed their services via cold telemarketing calls to a residential consumer's telephone number. Telemarketing solicitations to residential consumers have decreased since the National Do Not Call Registry was created, but telemarketing solicitations to small businesses continue because telemarketing calls to businesses are not covered by the National Do Not Call Registry.

These telemarketing pitches often are deceptive. Examples of deceptive telemarketing solicitations I have seen include misrepresentations in which consumers are told that:

- They are only agreeing to a free trial or to receive written materials about an offer, and that if they want to buy something, they must take some affirmative steps to make the purchase. In fact, however, if the consumers agree to the free trial or to receive materials, they are billed, even though they take no further steps; and
- The purpose of the call is to renew a small business consumer's current yellow pages listing, when in fact the vendor has no current business relationship with the small business consumer. This misrepresentation sometimes is coupled with a misrepresentation that the listing is free, and that the caller just needs to verify the business' information to include in the listing.

In some cases, in response to inquiries from my Office about telemarketing sales resulting in phone bill cramming, vendors have produced purported proof of authorization from consumers. This purported proof is referred to as a third party verification tape. Third party verification is a process in which a third party, supposedly unrelated to the vendor or telemarketer, joins the telemarketing call and asks a series of questions of the consumer to confirm that she agreed to the vendor's offer. This verification conversation is recorded and preserved for at least two years in order to respond to potential cramming complaints.

The fundamental problem with these verification tapes is that the recorded conversation takes place after the initial telemarketing call, which is unrecorded. Thus, at the point of the supposed verification, the consumer has already heard a deceptive telemarketing sales pitch and, as a result of the deception, has agreed to the free trial or to receive materials, or otherwise is under the impression that he has

not made a purchasing decision. The telemarketer often describes the verification process as a mere formality and instructs the consumer to answer yes to the questions posed.

At best, verification recordings involve a recording of a person saying yes or no to a few questions taken out of context following an unrecorded sales call in which the consumer was led to believe that no purchasing decision was being made, or that a current contract was being renewed. At worst, such recordings are falsified, and the voice on the recording is not that of the telephone subscriber.

Among falsified recordings, we have seen instances where someone is posing as the telephone subscriber in order to fabricate a sale. In other cases, the vendor will claim to have obtained authorization from a non-existent employee of a small business. Some residential consumers have listened to the purported verification tape and reported that the voice on the tape is not theirs.

In one case I brought, the vendor had billed over 9,800 Illinois consumers for credit repair services. Although the credit repair services were designed for individuals, the billed consumers include a county coroner's office, a Steak N Shake restaurant, and public library dial-a-story telephone line.

In another recent case, the materials that the billing aggregator produced to my Office indicate the vendor was billing for a service that was different from the description that appeared on consumers' telephone bills. Consumers' phone bills indicated they were being charged for some sort of Internet service. However, the actual product, according to the vendor, was both a cell phone warranty and Internet services, with more emphasis on the cell phone warranty.

In that case, we requested usage information from the vendor. The vendor indicated that none of the more than 3,600 Illinois consumers who were billed for that service had contacted the vendor to activate Internet service or request repair or replacement of their cell phone, thus confirming that Illinois consumers, small business, churches, and government offices were unaware they had purchased anything.

Letters of Agency and Live Check Solicitations

For a short time several years ago, some vendors would claim they had obtained authorization via a toll-free telephone number that consumers allegedly had dialed in order to request the services. However, no billed consumers who complained to my Office about those charges recalled having made such a request.

Another early marketing method was a Letter of Agency, or LOA. In some cases, LOAs were sweepstakes entry forms that served a dual purpose of entering a sweepstakes to win a prize and authorizing the vendor to charge the consumer a monthly charge for a product or service on his or her telephone bill. The form prompted consumers to provide their name, address, and telephone number. In many cases, upon seeing the LOA that the vendor relied on as authorization for the product or service to be billed, the consumer claimed that his or her signature had been forged.

In the last few years, we also have seen live check solicitations. Live check solicitations typically are sent to small businesses. The solicitations are actual checks for nominal amounts that also serve as a solicitation. Endorsing and cashing the check constitute acceptance of the vendor's offer, which involves being billed for a product or service on your telephone bill. This marketing method is particularly insidious, as small businesses often process numerous checks in the course of a day and would have no reasonable way to identify checks that are also solicitations.

My Office, as part of a multistate investigation with my colleagues in other states, sued a company that sold online business directory listings via live check solicitations. That company ultimately settled with the states and agreed to cease using live check solicitations. Almost immediately thereafter, the same company began offering the same online business directory listings via deceptive telemarketing solicitations. In this particular scheme, the telemarketer would falsely imply that the business was a current customer and was only being asked to renew its online yellow pages listing, so I sued the company a second time.

Online "Solicitations"

In recent years, vendors have moved to online solicitations. When a consumer complains about unauthorized telephone bill charges for items such as credit repair services, cell phone warranties, or ID theft protection services, for example, the vendor claims to have obtained authorization from the consumer online. In some cases, the proof the vendor provides my Office that the consumer authorized the charges is personal information about the consumer, such as telephone number, date of birth, address, e-mail address, or IP address. This information is displayed in what appears to be a simple sign-up form.

However, we believe the sign-up forms typically provided to us as so-called proof of authorization are not the actual forms that consumers complete to authorize the

purchase. Instead, the simple sign-up form we receive appears to have been populated with information obtained from an online sign-up process known as “co-registration.” In this process, a consumer believes he is registering to receive something for free, such as coupons, or to win a prize, such as a television or DVD player. But in fact, by providing the requested personal information, the consumer is also “agreeing”—unwittingly—to purchase a service to be billed on his telephone bill.

At some point between online sign-up and the provision of the so-called proof of authorization, the registration information is submitted for billing on the consumer’s phone bill and is populated into a different sign-up form. In many cases, this second document is the only sign-up form provided to my Office. Consequently, we are often unable to inspect the online solicitation to see whether the key terms of the offer are disclosed clearly, if at all.

In other cases, the billed telephone number does not correspond to the name and address of the person to whom that telephone number is assigned.

Deceptive Online Marketing and Fraud

Some phone bill cramming operators rely on deceptive marketing to lure unsuspecting consumers, while others engage in outright fraud. In many of our cases involving deceptive marketing, the billed consumer may have provided his or her contact information online for the purpose of entering a prize drawing or obtaining coupons, as described above. In some of our cases involving fraud, it appears that someone, either the vendor or a third-party marketer that contracted with the vendor, simply entered names and telephone numbers (perhaps gleaned from the phone book or a public records service) into online sign-up portals or otherwise submitted falsified orders for processing. This is what is known as phantom billing, and it possibly explains why some consumers are billed even though they insist they have never used the Internet.

Recent investigations have provided us very little in the way of online marketing materials because billing aggregators tend to collect very little marketing information from their vendors. When vendors ask a billing aggregator to provide telephone bill access for the vendor’s service, the aggregator requests the vendor’s marketing materials in order to vet the vendor. However, instead of providing the actual landing and sign-up page, the vendor simply provides its own website, which tells the aggregator very little about its marketing methods. Based on what we’ve seen in our investigations, very few consumers actually go to the vendor’s website to sign up for the vendor’s services. Also, vendors often do not market their own services but instead contract out their marketing to third parties, who sometimes in turn contract it out to fourth parties. These third and fourth parties are part of the shadow world of affiliate marketers.

In many cases, the marketing materials used by these third and fourth parties are not provided to the billing aggregator, and the vendor disclaims any knowledge about the identity of the marketer and the appearance of these solicitations. One vendor indicated that at a certain point, it began to suspect fraud by one of its marketers when it noticed higher than expected customer service call volumes, implying that the customer complaint calls, as opposed to a careful review of the marketing materials, were the first sign of trouble.

Based on the responses to subpoenas from my Office and responses to consumer complaints, it appears that both the vendor and the billing aggregator commonly accept orders from these third and fourth party marketers without inquiry into whether appropriate solicitations were used to obtain the orders.

Past Approaches to Reducing Telephone Bill Cramming

My Office has filed 30 law enforcement actions in response to telephone bill cramming. These are in addition to the law enforcement efforts of numerous other state attorneys general and Public Utilities Commissions, and the Federal Trade Commission. These actions often result in the vendor shutting down and ceasing soliciting and billing for unwanted products and services. However, other vendors with the same deceptive and fraudulent business practices quickly appear in their place.

In response to the law enforcement and regulator scrutiny that followed the first wave of phone bill cramming complaints in the late 1990s, the aggregator industry implemented a set of “Best Practices” that called for participating industry members to follow certain steps before approving vendors for billing, and when handling consumer complaints received after the fact. At first, these responses seemed to reduce incidents of cramming. However, consumer complaints about phone bill cramming began to increase about three or 4 years ago, and our phone bill cramming investigations continue to indicate that consumers are not aware they are being billed for these products and services on their phone bills, and do not want or use the products or services.

Ban Third Party Telephone Billing

Simply put, these deceptive and sometimes fraudulent solicitations for products that no one wants or agreed to buy have persisted for at least 15 years and show no signs of disappearing. With a few exceptions for some regulated services, such as operator-assisted calls, it is time to put an end to third party billing on telephone bills by banning them at the state and/or Federal level.

Again, I thank you for the opportunity to testify today, and I am glad to answer any questions you may have.

The CHAIRMAN. Thank you very much, Attorney General Madigan. And now, we turn to Attorney General Burg.

Mr. BURG. No, it's actually Assistant Attorney General Burg, but I appreciate the——

The CHAIRMAN. We'll put you up for——

Mr. BURG.—promotion.

The CHAIRMAN. Yes.

Mr. BURG. OK. But Senator——

The CHAIRMAN. your work up there, and that's what we'd like to hear about it.

STATEMENT OF ELLIOT BURG, SENIOR ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, STATE OF VERMONT

Mr. BURG. I very much appreciate the opportunity to testify to the Committee today. Over the past year and a half, our office has been issuing subpoenas to third-party billing aggregators, to vendors.

We have been surveying consumers, and interviewing consumers, and we've reached a number of conclusions about the problem of cramming, which I'd like to share with you today. And then I'd like to talk about a potential solution to the problem that has been embraced in Vermont.

First of all, the incidence of cramming in Vermont is extremely high. Close to 90 percent of the people who responded to a survey had absolutely no recollection of ever having given consent to be billed on their local phone bill.

Second, the level of consumer awareness about the possibility that one can be billed for third-party charges on a local phone bill is extremely low.

Third, we have found many instances of deception being used in marketing third-party charges, that then get passed on to a local phone bill.

And fourth—and this is really the major point that I want to make and it has to do with consumer expectations—people, ordinary people, do not expect that third-party charges by companies that are unrelated to their local phone company can be placed on their local phone bill. They are simply not aware of that, any more than people would expect, or any of us would expect, to have third-party charges placed on our monthly mortgage account statements or our electric bill.

And without that awareness, people are not going to play the detective that we heard about. They're not going to scrutinize their phone bill to try to figure out, is there something on there that they should be complaining about.

Now, Vermont has given the potential solution of disclosure a fair shake. For the past decade, there has been a statutory require-

ment in Vermont that third-party vendors send a notice through the mail to people who are going to be billed on their local phone bills by that vendor. And the fact is that, that system has not worked. And the level of awareness of the possibility of those charges has not increased in the state.

So what have we done by way of potential solution? In January, the Attorney General's office proposed to the Vermont legislature that a bill they introduced that would actually prohibit third-party charges on local phone bills, with some limited exceptions for things like direct dial, or dial-around services that are initiated by the consumer from the consumer's phone, or operator-assisted, or collect calls, or companies that are directly regulated by our public utilities board. The proposal was otherwise to ban such charges and a bill was introduced to do that. It was approved by voice vote in both houses of our legislature. It was signed into law at the end of May and became effective immediately.

And under that law, a claim by a vendor that the consumer somehow consented to the charge is not a basis for allowing the charge. This is an actual prohibition. Other forms of payment are allowed, so vendors who want to charge people using a credit card, a debit card, electronic funds transfer, a check, the kinds of payment mechanisms that people understand and expect, that is all permissible. But you can't do it on a phone bill.

Since May, there has been no negative feedback whatsoever about the bill. We think people are pretty happy with it, and I would point out that the local phone companies supported us in that initiative in the legislature, that we approached them last fall, and made—basically made the pitch to them that these are their customers as well, and they came on board.

So with that coalition, we were able to get that legislation through and I would very modestly suggest that this may be a model for other states and for the nation. Thank you.

[The prepared statement of Mr. Burg follows:]

PREPARED STATEMENT OF ELLIOT BURG, SENIOR ASSISTANT ATTORNEY GENERAL,
OFFICE OF THE ATTORNEY GENERAL, STATE OF VERMONT

My name is Elliot Burg. I am a Senior Assistant Attorney General in the Vermont Attorney General's Office, where I have worked on issues of consumer protection since 1987. I very much appreciate the opportunity to testify today on the subject of cramming, on behalf of Vermont Attorney General William H Sorrell.

Since the spring of 2010, I have overseen a multi-pronged investigation into "cramming" in Vermont—that is, the practice of charging consumers and businesses on their local telephone bills for third-party services¹ without their authorization or knowledge. Based on the results of that investigation, which is still ongoing, some important observations can be made about the *nature and scope* of the problem of cramming. In addition, out of the investigation has come a state legislative proposal, enacted into law earlier this year, which represents a potential *solution* to the problem.

The investigation

In the spring of 2010, the Vermont Attorney General's Office sent a Civil Investigative Subpoena under the state's Consumer Fraud Act, 9 V.S.A. §2460, to the first of what would ultimately be four billing aggregators—the companies that arrange for the placement of charges on local telephone bills to pay for third-party

¹What are sold in this way are almost always services, rather than goods.

services.² Based on complaints filed by consumers with the state, there was reason to believe that the sellers of those services (called “merchants” here) had violated the Act by charging consumers³ without their authorization. There was also reason to believe that neither the vendors nor the aggregators were complying with a Vermont statute enacted in the year 2000 that sought to address the problem of cramming by requiring notice to consumers⁴ of billing in the form of a letter containing specified information about the charges, any right to cancel, and contact information for the Attorney General’s Office.

The aggregators were asked by subpoena to identify merchants for whom they had arranged for charges to appear on local telephone bills in Vermont. The Attorney General’s Office then subpoenaed the merchants with the highest total of dollars billed, for detailed information on their Vermont “customers,”⁵ their methods of doing business, and their marketing materials, including web pages and telephonic scripts. Surveys were mailed to a number of the customers, asking, among other things, whether they were aware that they had been charged for the particular service, whether they had received notice of the charges other than on their local telephone bill, and whether they had consented to the charges.

The merchants consisted mostly of companies we had never heard of—such as More Local Reach, MyiProducts, YPD—that offered e-mail, third-party voice mail, computer technical support, online directory listings, website hosting, and other services.

Conclusions drawn about the nature and scope of cramming

Three main conclusions were arrived at as a result of our investigation:

1. *The level of consumer awareness about third-party charges on local telephone bills is very low.* Of the 562 responses to 1,700 surveys mailed in connection with the first of the aggregators to be investigated, only 8 (1.4 percent) recalled having received any separate written notice of their charges (although the merchants claimed to have provided notice, either online or through the mail), and only an estimated 27.4 percent noticed the charge within the first 3 months of its appearance on their telephone bill.⁵

2. *The incidence of cramming is very high.* Of the 562 respondents, fully 503 (89.5 percent) stated that they had not agreed to be charged for the third-party services that appeared on their telephone bill. Indeed, a number of these consumers indicated that they had no reason to order the services for which they were charged; the respondents gave such explanations as, “[I] have an answering machine [and so] would never use this service,” “I had voice-mail from the phone company [and] did not need [another service],” and “[I] can’t imagine agreeing to voice-mail since we have always had a personal voice recorder.”

3. *Deceptive telemarketing scripts have been used.* Of the merchants who telemarketed their potential customers—usually businesses—a number used scripts that misstated the purpose of the call. Typical of those scripts was one employed by eBridge, Inc., which offered an online directory to local businesses using a script that began, “The reason I’m calling today is to make sure your information is listed correctly.” In fact, the reason for the call was to sign up the business for a \$49.95-per month service.

Merchant settlements

The investigation also led to a series of settlements, all in the form of Assurances of Discontinuance, with eight merchants. It is anticipated that there will be another 20 or more such settlements before the initiative is over. In all, the eight companies charged more than 7,000 consumers and 1,300 businesses in Vermont a total of over \$639,000.

The settlements were with the following companies:

²Information and documents produced in response to such a subpoena are deemed confidential under 9 V.S.A. §2460. As a result, this testimony details only facts obtained from other sources or otherwise made public, such as through formal settlements.

³Under the Vermont Consumer Fraud Act, the term “consumer” in most situations includes businesses.

⁴The notice requirement, enacted in the year 2000 and now substantially amended (as discussed below), was set out in 9 V.S.A. §2466. That section required merchants to send the notice, but held both merchants and aggregators liable if that did not occur.

⁵A total of 234 (41.6 percent) responding consumers indicated on the survey that they noticed a third-party charge on their local telephone bill. It was then possible to identify the billing records of 205 of these consumers; and of that number, 135 (65.9 percent) were charged for fewer than 4 months. The resulting percentage of consumers who noticed the charge, but only within the first 3 months, was 41.6 percent x 65.9 percent, or 27.4 percent.

- Douglas-Lambert Laboratories LLC, doing business as Orbit Telecom, of Henderson, Nevada, which charged more than 1,200 Vermonters over \$119,000 for a voice-mail service between 2004 and 2006.
- Durham Technology, LLC, d/b/a MyiProducts IMail, of Indianapolis, Indiana, which charged more than 1,300 Vermonters over \$78,000 for a voice-mail service between 2005 and 2010.
- eBridge, Inc., also known as Lawstar, Inc., doing business as B2B-ISP, eLink-ISP, InMySip, MSMB-ISP, and Zip Wide Web, Inc., also known as ZWW-ISP, based in Encino, California, which charged 485 Vermont businesses over \$93,000 for an online business directory service between 2004 and 2010.
- Liveonthenet.com, based in Huntsville, Alabama, which charged 852 Vermonters over \$56,000 for personal computer technical support between 2005 and 2008.
- More Local Reach, Inc., of Boca Raton, Florida, which charged 214 Vermont businesses over \$58,000 for online directory services between 2007 and 2010.
- Residential E-mail LLC, based in Henderson, Nevada, which charged more than 1,170 Vermonters over \$65,000 for an e-mail service between 2005 and 2006.
- The Internet Business Association, Inc., based in Carson City, Nevada, which charged 435 businesses over \$86,000 for an Internet and website address service between 2007 and 2010.
- YPD Corporation of Smyrna, Georgia, which charged 201 Vermont businesses over \$84,000 for online directory services between 2007 and 2010.⁶

Given that there are many more such companies, consumer losses in Vermont over the past 6 years have likely totaled in the millions of dollars—a significant issue for a state with a population of only 620,000, and an indicator that the problem nationwide is very substantial.

The solution: prohibition, not disclosure

Vermont's through-the-mail notice requirement enacted in 2000 to address the problem of cramming has not worked. For a decade, consumers have not received, seen or understood notifications that merchants claim to have provided; most of them have not readily noticed the merchants' charges on their telephone bills; and very few of them recall ever having agreed to be billed. In short, despite the notice requirement, consumers have continued to be crammed, a fact that is not surprising in light of the low level of public awareness that non-telephone charges can appear on one's telephone bill (any more than that third-party charges can be passed through to a person's electric bill, fuel bill, or monthly mortgage account statement).

In January 2011, the Attorney General's Office presented legislation *prohibiting* most third-party charges on local telephone bills for introduction in the Vermont Legislature. With the support of the local telephone companies, this anti-cramming measure passed both the Vermont House and Senate by voice vote, and on May 27, 2011, it was signed into law by Governor Peter Shumlin and became effective immediately.

The new law,⁷ which amends the earlier notice requirement, 9 V.S.A. § 2466, contains a general prohibition on third-party charges to local telephone bills, with the following limited exceptions:

- Billing for goods or services marketed or sold by a company subject to the jurisdiction of the Vermont Public Service Board;
- Billing for direct dial or dial-around services initiated from the consumer's telephone; and
- Operator-assisted telephone calls, collect calls, and telephone services that facilitate communication to or from correctional center inmates.

Vermont's statutory approach takes account of actual consumer expectations—*i.e.*, that consumers do *not* anticipate that they will be charged on their local telephone bills for third-party services. It is straightforward to enforce. It does not interfere with other methods of receiving payment for services provided, such as credit cards, debit cards, personal checks, and electronic funds transfers. And it is viewed as a solution to the problem of cramming in our state—one that other jurisdictions may wish to adopt in the future.

⁶ An example of these settlements accompanies this testimony as Attachment 1.

⁷ The text of the law is set out in Attachment 2 to this testimony.

ATTACHMENT 1

State of Vermont
Superior Court
Washington Unit

In Re eBridge, Inc., a/k/a Lawstar, Inc.,)	Civil Division
d/b/a B2B-ISP, eLink-ISP, InMyZip,)	Docket No. 276-5-11Wncv
MSMB2B-ISP, and Zip Wide Web, Inc.,)	
a/k/a ZWW-ISP)	

Office of the ATTORNEY GENERAL Montpelier, Vermont 05609

ASSURANCE OF DISCONTINUANCE

WHEREAS eBridge, Inc., a/k/a Lawstar, Inc., d/b/a B2B-ISP, eLink-ISP, InMyZip, MSMB2B-ISP, and Zip Wide Web, Inc., a/k/a ZWW-ISP, (hereinafter referred to as “eBridge”), is a California corporation with offices 16133 Ventura Blvd., Suite 855, Encino, CA 91436;

WHEREAS eBridge is a third-party provider of an online business directory to businesses, the charges for which were placed on local telephone bills with the assistance of a San Antonio-based company called Enhanced Services Billing, Inc. (ESBI);

WHEREAS eBridge solicited Vermont businesses over the telephone to purchase its service;

WHEREAS eBridge’s charges to businesses averaged \$49.95 per month;

WHEREAS during the period 2004 to 2010, eBridge charged a total of \$93,007 to 485 businesses for its services that appeared on local telephone bills in Vermont’s area code 802, with \$16,983 refunded;

WHEREAS sellers of goods or services that are to be charged on a consumer’s (including a business’) local telephone bill are required under 9 V.S.A. § 2466 to mail a notice to the party to be charged, containing information specified in the statute, including the consumer assistance address and telephone number specified by the Attorney General, which notice must be a separate document sent for the sole purpose of providing that information and may not contain any inducement to purchase goods or services;

WHEREAS eBridge mailed notices to Vermont businesses that were charged for its services on their local telephone bills;

WHEREAS the Attorney General alleges that eBridge violated the Vermont Consumer Fraud Act, 9 V.S.A. § 2466, by not complying with that provision’s notice requirements in that eBridge’s notices (i) failed to include the consumer assistance address and telephone number specified by the Attorney General; and (ii) did not constitute separate documents sent for the sole purpose of providing the information required by the statute;

WHEREAS the script used by eBridge’s telemarketers stated at the outset, “The reason I’m calling today is to make sure your information is listed correctly.”;

WHEREAS the Attorney General alleges that the primary purpose of eBridge’s calls was, instead, to solicit the purchase of its service, which was explained later in the company’s telemarketing script;

WHEREAS the Attorney General therefore alleges that eBridge’s script misrepresented the purpose of the company’s sales calls, in violation of the Consumer Fraud Act prohibition on deceptive trade practices, 9 V.S.A. § 2453(a);

AND WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE, the parties agree as follows:

1. *Injunctive relief.* EBridge shall comply strictly with all provisions of Vermont law, including but not limited to provisions of the Vermont Consumer Fraud Act, 9 V.S.A. chapter 63, relating to the placement of charges on local telephone bills and the prohibition on deceptive trade practices.

2. *Consumer relief.*

a. For each business from which eBridge has received money through a charge on a local telephone bill with a number in area code 802, eBridge shall, within ten (10) business days of signing this Assurance of Discontinuance, arrange for an electronic credit record to the business’ local telephone company in the amount of all

such monies that have not been previously refunded. eBridge shall use due diligence to ensure that accurate credits are provided to each business to whom a credit is due.

b. If a credit record sent under the preceding paragraph is not accepted or is returned by the local telephone company, eBridge shall, within ten (10) days of learning of the non-acceptance or the return, send to the business, by first-class mail, postage prepaid, a check in the amount of the credit due to the business' last known address, accompanied by a letter in substantially the form attached as Exhibit 1.

c. No later than 60 (sixty) days after signing this Assurance of Discontinuance, eBridge shall provide to the Vermont Attorney General's Office the names and addresses of the businesses whose telephone numbers were credited, and to which letters and payments were sent, under this Assurance of Discontinuance, along with the date and amount of each credit or payment.

d. No later than ninety (90) days after signing this Assurance of Discontinuance, eBridge shall pay the total dollar amount of all checks returned as undeliverable to the Vermont Attorney General's Office to be treated as unclaimed funds, along with a list in Excel format of the businesses to whom the monies due were not paid and their last known addresses.

3. *Civil penalties, fees and costs.* Within twenty (20) days of signing this Assurance of Discontinuance, eBridge shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of ten thousand dollars (\$10,000.00) in civil penalties and costs.

4. *Binding effect.* This Assurance of Discontinuance shall be binding on eBridge, its successors and assigns.

5. *Release.* The State of Vermont hereby releases and discharges any and all claims that it may have against eBridge or its affiliates based on conduct or activities arising under or in connection with the Vermont Consumer Fraud Act prior to the date of this Assurance of Discontinuance.

Filing Date: May 4, 2011

Exhibit 1 (Letter to Businesses)

Dear [Name of Business]:

eBridge, Inc. has entered into a settlement with the Vermont Attorney General's Office to resolve claims that we did not properly notify you of the fact that your business would be billed on your local telephone bill for our online business directory service, and that we used deceptive practices to interest you in buying our service.

As part of that settlement, we are enclosing a refund check for all of these charges. You have no obligation to do anything in response to this payment.

Sincerely,

EBRIDGE, INC.

ATTACHMENT 2

Vermont "Anti-Cramming" Statute (2011)

9 V.S.A. § 2466 is amended to read:

§ 2466. GOODS AND SERVICES APPEARING ON TELEPHONE BILL

(a) Except as provided in subsection (f) of this section, a seller shall not bill a consumer for goods or services that will appear as a charge on the person's bill for telephone service provided by any local exchange carrier.

(b) No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier, to bill a consumer for goods or services other than as permitted by this section. This prohibition applies, but is not limited, to persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.

(c) Failure to comply with this section is an unfair and deceptive act and practice in commerce under this chapter.

(d) The attorney general may make rules and regulations to carry out the purposes of this section.

(e) Nothing in this section limits the liability of any person under existing statutory or common law.

(f)(1) This section shall apply to billing aggregators described in 30 V.S.A. § 231a, but shall not apply to:

(A) billing for goods or services marketed or sold by persons subject to the jurisdiction of the Vermont public service board under 30 V.S.A. § 203;

(B) billing for direct dial or dial around services initiated from the consumer's telephone; or

(C) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates.

(2) Nothing in this section affects any rule issued by the Vermont public service board.

The CHAIRMAN. Thank you very much, Mr. Burg. Now, we turn to Ms. Susan Eppley from Georgia, who has had some experience, that I think she'd like to share with us, about cramming.

STATEMENT OF SUSAN EPPLEY, DECATUR, GA

Ms. EPPLEY. Thank you Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee. Thank you for having me here today. Good morning. My name is Susan Eppley and I'm from Decatur, Georgia. I'm here today to tell you about my personal experience with cramming. In early 2011, I worked for a successful franchisee of 32 quick-service restaurants as the accounts payable representative.

This company, even in tough times, offers incentives to managers and crew, including but not limited to bonuses paid to managers for hitting their numbers, based on profit-and-loss statements. In October, I was entering the AT&T invoices. I got curious about how different the bills were from store to store.

Upon investigation, I noticed that there were charges for services that were not from AT&T, our telephone company. I called AT&T and spoke with a customer service representative, who recognized the problem, and she explained that AT&T was billing on behalf of a third-party company. When I asked further, she said that it was the customer's responsibility to block phone bills from such charges. She told me that she takes a lot of calls like mine.

I contacted the third-party company at the phone number provided and spoke to their customer service representative, who said that we requested the service. I then contacted the area manager for this store and he said he didn't request the service. So I went back and forth from area manager to the company until I just insisted that the charges were never requested, as only area managers have authorization to make those requests.

Upon my insistence, the representative offered to take 3 months of the charges off and credit the AT&T bill for the next month. But I insisted that all \$1,900 be credited back. The representative then said he couldn't do that and that he had a recording of the request for service. I asked to hear it. I was then transferred to a supervisor, who then credited all the charges and I never heard a recording.

For the next 2 months, I combed through every single AT&T bill for all of our accounts, set up a block on each account to prevent future cramming, and to my best estimation, I spent about 15 hours dedicated to this issue alone. Those hours do not include the time our accounting department and area managers have spent on it.

In the end, 6 of our 33 accounts were affected and the estimated total amount crammed onto our phone bills was about \$4,200. Upon my persistence and insistence, that amount was credited

back. Even though, each time, the third-party company told me they had a recording proving that we requested each service, they never played that recording for me. It certainly is annoying and a hassle to deal with additional administrative paperwork, making additional phone calls, and keeping information organized, especially for services not requested.

Our already busy accounting department had to deal with their own administrative issues, such as readjusting profit-and-loss statements, et cetera. But the inconvenience and cost of administrative paperwork on this issue pales in comparison to what it has taken away from the managers of our restaurants. These managers work long hours in a busy, demanding environment, all with a smile on their faces. They have a tremendous job, juggling employee relations, customer satisfaction, serving safe food, and controlling costs.

As I mentioned earlier in my statement, great managers are rewarded with bonuses. And some of our managers, no matter how hard they work and no matter how much they earned it, did not receive their bonuses because of cramming. It is infuriating to me that it is legal for companies to, without authorization, charge our businesses, and skew our profit-and-loss statements, and in effect, take money out of the hands of hard-working, deserving men and women.

I shudder to think that citizens, especially senior citizens who are on a fixed budget, are falling victim to cramming because they don't have an accounts payable representative to check their phone bills for unauthorized charges. It is my hope that our lawmakers will prevent businesses and individuals from being a victim to cramming by making it illegal for AT&T and other companies to allow third-party billing. Thank you.

[The prepared statement of Ms. Eppley follows:]

PREPARED STATEMENT OF SUSAN EPPLEY, DECATUR, GA

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, thank you for having me here today. Good morning. My name is Susan Eppley and I am from Decatur, GA. I am here today to tell you about my personal experience with "cramming."

In early 2011 I worked for a successful franchisee of 32 quick service restaurants including Popeyes, Burger King and Krispy Kreme Doughnuts restaurants. I was the Accounts Payable representative and I entered invoices for the restaurants. This company, even in tough times, offers incentives to managers and crew including, but not limited to, bonuses paid to managers for "hitting" their numbers based on Profit and Loss statements.

In October 2010, as I was entering the Popeyes' AT&T invoices, I got curious about how different the bills were from store to store. Upon investigation, I noticed that there were charges for services that were not from AT&T. On one such bill, on the last page, the charges were from ILD Teleservices, Inc. The charge was \$49.95 for "Efax SVC MNTHLY FEE."

I called AT&T and spoke with a customer service representative who recognized the problem. She explained that AT&T was billing on behalf of a 3rd party company. When I asked further, she said it is the customer's responsibility to block phone bills from such charges. She told me that she takes a lot of calls like mine.

I contacted the 3rd party company at the phone number provided on the bill and spoke to a customer service representative who stated that we requested the service. I then contacted the Area Manager for the store location and he said the charge was not requested. Back and forth I went from Area Manager to the company until I insisted that the charges were never requested as only Area Managers have authorization to request services. Upon my insistence, the representative offered to take 3 months of the charges off and credit the AT&T bill for the next month but

I insisted that all \$1,900 be credited back. The representative then stated he could not do that and that he had a recording of the request. I asked to hear it. I was transferred to a supervisor who then removed all the charges. I never heard a recording.

For the next two months, I combed through every AT&T bill for all of our accounts, set up a block on each account to prevent future cramming and to my best estimation, I spent 15 hours dedicated to this issue alone. Those hours do not include the time our Accounting Department and Area Managers have spent on it.

Throughout this process I wrote the Better Business Bureau and did some on-line research about cramming. I was amazed to find how many small businesses are being taken advantage of by New Link Network. I learned that employees of small businesses who answer the phone are asked by fast-taking sales representative if they would like to optimize their sales by being listed in a free directory (or something similar). If the employee responds, "yes" at any point, the sales rep considers that a contract and begins the billing after a 1-3 month free trial.

In the end, six of our 33 accounts were affected. Popeyes, Krispy Kreme and even our corporate office accounts were "crammed." The estimated total amount "crammed" onto our phone bills was about \$4,200. Upon my persistence and insistence that amount has been credited back. And even though each time the third party company told me that they had a recording proving that we requested each charge, they never played that recording for me.

It certainly is annoying and a hassle to deal with additional administrative paperwork, making additional phone calls and keeping information organized especially for charges not requested. Our already busy Accounting Department had to deal with their own administrative issues such as re-adjusting Profit and Loss statements, etc. But the inconvenience and cost of administrative work on this issue pales in comparison to what it has taken away from the managers of the restaurants.

Quick service restaurant managers work long hours in a busy, demanding environment all with a smile on their faces. They have a tremendous job juggling employee relations, customer satisfaction, serving safe food and controlling costs. As I mentioned earlier in my statement, great managers are rewarded with bonuses and some of our managers, no matter how hard they worked and no matter how much they earned it, did NOT receive their bonuses because of the practice of "cramming."

It is infuriating to me that it is legal for companies to, without authorization, charge our businesses and skew our Profit and Loss statements and, in effect, take money out of the hands of hard working, deserving men and women.

I shudder to think that citizens, especially senior citizens who are often on a fixed budget, are falling victim to cramming because they don't have an Accounts Payable Representative to check their phone bills for unauthorized charges.

It is my hope that our lawmakers will prevent businesses and individuals from being a victim to cramming by making it illegal for AT&T and other companies to allow 3rd party billing.

Thank you.

The CHAIRMAN. Thank you very much. I wish there were more consumers like you. I mean, you've just—you are a bulldog, but you had to be.

Ms. EPPLEY. Thank you, sir.

The CHAIRMAN. I guess that's not complimentary, but I meant it to be. Our next witness is Dave Spofford, who is the President of Xigo, and you're from Manassas, Virginia. And what do you have to tell us?

**STATEMENT OF DAVID SPOFFORD,
CHIEF EXECUTIVE OFFICER, XIGO, LLC**

Mr. SPOFFORD. Chairman Rockefeller, other Senators, members of the Committee, thank you for having me here today. My name is David Spofford. I'm the founder and CEO of Xigo. We're a communications expense management company based in Manassas, Virginia. And thank you for your commitment to investigating this very important issue of cramming.

I have a 20-year background in telecommunications contracts and billings and I've never seen cramming as bad as it is today. As we process tens of thousands of carrier invoices every month for our customers, and are responsible for removing these third-party charges for many of our clients, we are particularly interested in this subject matter.

Cramming or unauthorized charges by communications carriers on behalf of third parties has been and remains a major problem for the industry. Xigo manages approximately \$1 billion per year in telecommunications expenses for more than 200 clients. We have built software that helps companies of all sizes manage their communications expenses and identify areas where they can cut costs. We are a member of the Telecommunications Expense Management Industry Association, for which I have served as President.

Our clients spend from \$50,000 to \$10 million per month on a variety of telecommunications services. We monitor their invoices every month, which allows us to identify trends, recurring problems, and the results of our joint efforts to get control of the telecom expenses.

Because of this, we have a unique view into the world of telecommunications billings and services. After reviewing 3 years of historical data, we have found the following information that I hope will help the Committee to investigate this problem. We have found 40,000 unique instances of cramming during that timeframe. The recurring amount for an average cram is approximately \$18 a month. We estimate that over 80 percent of all businesses experience cram charges. Seventy-one percent of our customers have experienced cram charges just in the last 3 years.

Since the average charge is small and the time investment required to eliminate the charge is high, many customers simply pay the charge. Xigo has identified several major third-party billing—third-party billing consolidators who are responsible for the majority of these charges.

In addition, we have identified approximately 600 third-party biller names that are used to bill nearly 3,000 different line item charges. The large quantity of biller names that are used by a much smaller number of actual billers may be a strategy to avoid automated detection by systems like ours. These charges often have descriptions such as voicemail, e-mail, directory services, web hosting, and other names that appear to be normal services to the customer.

As it turns out, more than 99 percent of these charges are unauthorized by the customer and are for services that they are not receiving. Decentralized, multi-location companies seem to have more exposure than other businesses. Some large retail chains, for example, are particularly hard hit.

The more invoices a business receives, the harder cramming is to detect, since it may be assumed that the remote location may have ordered one of these services that are being billed. Xigo has provided the Committee staff with the details and the names of the third-party billers and line-item descriptions commonly used for these charges. The communications industry, both fixed and mobile, is already complex and growing quickly.

A stop to the practice of cramming would be a welcome relief to all communications customers. Chairman Rockefeller, I thank you for your time. Xigo is committed in supporting your efforts in any way that we can. We look forward to working with you in putting a stop to this problem.

[The prepared statement of Mr. Spofford follows:]

PREPARED STATEMENT OF DAVID SPOFFORD, CHIEF EXECUTIVE OFFICER, XIGO, LLC

Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, thank you for having me here today.

My name is David Spofford. I am the founder and CEO of Xigo, a cloud-based communications expense management company, based in Manassas, Virginia. I want to thank you for your commitment to investigating this very important issue of cramming.

I have a 20 year background in telecommunications contracts and billing and I have never seen cramming as bad as it is today. As we process tens of thousands of carrier invoices every month and are responsible for removing third party charges for many of our clients, we are particularly interested in this subject matter. Cramming, or unauthorized charges by communications carriers on behalf of third parties, has been, and remains a problem for the industry.

Xigo manages approximately \$1 billion per year in telecommunications expenses for more than 200 clients. We have built software that helps companies of all sizes manage their communications expenses and identify areas where they can cut costs.

We are a member of the Telecommunications Expense Management Industry Association (TEMIA), for which I have served as President. Our clients spend from \$50,000 to over \$10 million per month for a variety of telecom services.

We monitor our clients' telecom invoices every month—allowing us to identify trends, recurring problems, and the results of our joint efforts to get control of telecom expenses. Because of this, we have a unique view into the world of telecommunications billing and services.

After reviewing three years of historical data, we have found the following information, that I hope will be helpful as you continue to investigate this problem:

- We have found 40,000 unique instances of cramming during that timeframe;
- The recurring amount for an average cram is approximately \$18 per month;
- We estimate that over 80 percent of business users experience cram charges;
- 71 percent of our customers have experienced a cram charge during the past 3 years.

Since the average charge is small and the time investment required to eliminate the charge is high, many customers simply pay the charge. Xigo has identified several major third party billing consolidators who are responsible for the majority of these charges. In addition, we have identified approximately 600 Third Party biller names that are used to bill nearly 3,000 different line item charges. The large quantity of biller names that are used by a much smaller number of actual billers may be a strategy to avoid automated detection by systems like ours.

These charges often have descriptions such as "Voice Mail," "E-mail," "Directory Services," "Web Hosting" and other names that appear to be normal services to the customer. As it turns out, more than 99 percent of these charges are unauthorized by the customer and are for services that they are not receiving.

Decentralized, multi-location companies seem to have more exposure than other businesses. So large retail chains, for example, are particularly hard hit. The more invoices a business receives the harder cramming is to detect since it may be assumed that the remote location may have ordered one of these "services" being billed.

Xigo has provided the Committee staff with the details of the names of third party billers and line item descriptions commonly used for the charges. The communications industry, both fixed and mobile, is already complex and growing quickly. A stop to the practice of cramming would be a welcome relief to all communications customers.

Chairman Rockefeller, Ranking Member Hutchinson and members of the Committee, I thank you for your time. Xigo is committed to supporting your efforts in any way that we can. We look forward to working with you and putting a stop to this problem.

The CHAIRMAN. Thank you, Mr. Spofford, very much. And our final witness will be Mr. Walter McCormick, who is President of the United States Telecom Association here in Washington.

**STATEMENT OF WALTER B. McCORMICK, JR., PRESIDENT
AND CEO, UNITED STATES TELECOM ASSOCIATION**

Mr. McCORMICK. Thank you, Mr. Chairman. Chairman Rockefeller, Senator Ayotte, members of the Committee, thank you for giving me the opportunity to testify today on behalf of the United States Telecom Association. And I might add, it's a personal pleasure for me to be back before this committee, which I had the honor for serving for many years as General Counsel to the Majority and as Chief Counsel to the Minority.

Mr. Chairman, our industry accepted your invitation to appear here today for three reasons: first, to acknowledge the existence of a continuing problem, one that impacts consumers, one that has continued for many years despite remedial measures undertaken by our industry and by the Federal Communications Commission.

Second, we appear here today to both honor and to cooperate in your efforts to draw attention to cramming and to eliminate it.

And third, we appear to pledge our industry's good faith commitment to work with you, to work with the Committee, and with the appropriate Federal regulatory agencies toward further reforms.

Mr. Chairman, our position, simply put, is that consumers should not be charged for services they did not purchase.

For our industry, third-party billing had its genesis in a well-intentioned, pro-consumer initiative by the federal government. In the wake of the AT&T divestiture, the FCC required telephone companies that had been part of the Bell System to bill and collect charges on behalf of competing long-distance carriers and enhanced-services providers.

Federal regulators believed that the convenience of having all communications-related services on a single bill was an important pro-competition, pro-consumer policy. Although no longer required, third-party billing continues to be valued by many legitimate businesses and by some consumers as a convenience.

Three interrelated measures formed the foundation of the basic consumer protection framework that is in place today. They are the industry's anti-cramming best practices guidelines, the FCC's Truth in Billing order, and agency enforcement.

Pursuant to these measures, the steps that telephone companies are taking to protect their customers fall into four distinct categories.

The first level of protection seeks to prevent bad actors from getting access to the telephone bill in the first place. Contractual commitments with billing aggregators require active oversight from all service providers for whom they submit charges.

The second level of protection seeks to make charges on a customer's bill clear and transparent. For example, third-party charges are aggregated in a separate section of the bill, along with notification that such charges may be contested without risking phone service.

The third level of protection is to provide an instant credit to any customer that notifies the company that a charge on their bill is

not authorized. The policy of leading companies in the industry is to eliminate the charge, no questions asked. The goal of this first-call approach is to provide the consumer with full relief without further hassle, including an offer to block further charges from that service provider and to review prior bills to see if similar charges that previously went unnoticed need to be removed as well. Finally, many companies offer the customer the option of placing a block on all third-party charges.

The fourth level of protection involves monitoring, and audits, and suspension of service to problem providers. These measures, taken together, can have dramatic results. One of our companies reports having achieved an 89 percent reduction in cramming complaints since January 2010.

Nevertheless, Mr. Chairman, as this hearing and your investigation demonstrate, the problem of cramming persists. So Mr. Chairman, we close our testimony as we began—by acknowledging the existence of a continuing problem and by committing ourselves to working with you and the Committee in addressing it.

[The prepared statement of Mr. McCormick follows:]

PREPARED STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT AND CEO,
UNITED STATES TELECOM ASSOCIATION

Chairman Rockefeller, Ranking Member Hutchison, members of the Committee, thank you for giving me the opportunity to appear before you today and present the views of our industry on the important issue of preventing “cramming.”

The United States Telecom Association represents broadband service providers engaged in the business of offering advanced communications services. Previously known, years ago, as the United States Telephone Association, USTelecom today represents companies offering a wide range of voice, video, and data services, on both a fixed and mobile basis, in markets both urban and rural. Our member companies range in size from the largest publicly-traded communications corporations to small privately-owned companies and rural cooperatives.

Mr. Chairman, simply put, consumers should not be charged for services they did not purchase. I appreciate this opportunity to describe the measures that are being taken in our industry, both voluntarily and in compliance with Federal regulation, to prevent cramming.

The FCC has identified three parties as typically being involved in the billing chain for products or services being charged on the consumer’s telephone bill—the third-party provider of that product or service, the billing consolidator or clearinghouse, and the local exchange company that presents the invoice to its customer. Each has a separate and distinct role and responsibility in relation to the consumer, and in protecting against fraud. The focus of my testimony will be on the third part of that chain, the local exchange carrier.

At the outset, it is important to note that with regard to local exchange companies, third-party billing had its genesis in a well-intentioned pro-consumer initiative by the Federal Government. In the wake of the AT&T divestiture, the FCC required telephone companies that had been part of the Bell System to bill and collect charges on behalf of competitive long distance carriers and enhanced services providers offering services such as phone mail, paging, prison calls, and conference calling—often in competition with the local exchange provider. While large long distance carriers contracted directly with the local exchange companies for billing, consolidators and clearinghouses served as middlemen for competitive service providers that were too small, or who had too few transactions, to contract directly with each local exchange company for billing services. The convenience of having all telecommunications-related services incorporated into a single bill was believed to be a pro-competition, pro-consumer requirement. Although the federal government later eliminated these regulations, the provision of third-party billing and collection services continues to be considered by many entirely legitimate businesses as an efficient and consumer-friendly way to bill for their products or services, and by many consumers as a convenience.

The history of the cramming problem is well known to this committee. As telephone companies opened their billing systems to industry competitors and third-

party providers, scammers and con artists took advantage of the ease with which they could obtain telephone numbers, and began defrauding both telephone companies and their customers by invoicing consumers for services that had not actually or knowingly been purchased. In response to a rapid growth in consumer complaints in the late 1990s, FCC Chairman Bill Kennard responded with a three-part initiative:

1. *A challenge to the industry*: to develop and implement a voluntary code aimed at preventing unauthorized charges from ever appearing on consumer bills. The industry responded immediately—producing “Anti-Cramming Best Practices Guidelines” within two months.
2. *The promulgation of new “truth-in-billing” rules*: to assure consumers that telephone bills would be well-organized and easily understandable, with full and non-misleading descriptions of charges, and directions on how to make inquiries about, or contest charges on, individual bills.
3. *Aggressive enforcement*: to take action against parties engaging in fraudulent practices.

These three complementary and inter-related measures—the industry’s 1998 *Anti-Cramming Best Practices Guidelines*, the FCC’s 1999 *Truth-in-Billing Order*, and agency enforcement—form the foundation of the basic framework in place today.

Although quite detailed, the key elements of the *Best Practices* can be summarized as calling upon local exchange carriers to provide:

- Pre-acceptance screening of third-party products, services and marketing materials;
- Procedures for monitoring complaint levels, and establishment of complaint level thresholds for terminating billing services for individual providers and billing aggregators;
- Procedures for authorization and verification of charges to ensure that consumers have, in fact, knowingly approved of them;
- Clear descriptions of charges, and information on how the consumer may challenge them;
- Options for consumers to take advantage of in order to control the types of charges that may appear on their bills; and
- Commitments to law enforcement and regulatory agencies to work cooperatively with them in eliminating cramming.

Today, just as the crammers, scammers and con artists have adopted new and more sophisticated approaches to evading detection, local exchange companies operating in conformance with the *Best Practices* have continued to evolve and improve their billing practices to guard against consumer fraud. The steps that telephone companies are taking in order to better protect their customers fall into four distinct categories.

The *first level* of protection involves seeking to prevent bad actors from ever getting access to the telephone bill in the first place. This protection is sought through contractual commitments from billing aggregators requiring them to undertake active oversight of all service providers for which they intend to submit charges. For example, such contractual provisions typically:

- Require the billing aggregator to obtain a detailed application for each new service provider, including a review of ownership and product information, the bill description of the service, 800 customer service numbers and marketing materials.
- Require aggregators to obtain signed commitments from service providers that they will utilize acceptable authorization and verification processes and agree to audits of documentation. Such processes typically involve traditional letter-of-authorization or third-party-verification, with double-click options and “welcome packages” increasingly being employed on Internet-based transactions.
- Require aggregators to maintain a website and toll free number for handling customer inquiries and complaints.
- Set cramming complaint thresholds for billing aggregators and individual providers, and provide for suspension or termination of billing services if those thresholds are exceeded. Such contractual provisions often include penalties to be paid by the aggregator for each complaint received in order to incent active oversight.
- And, require the billing aggregator to be subject to audits of its contractual obligations, and to pay penalties for being out of compliance.

The *second level* of anti-cramming protection involves continuing efforts to make new charges on a customer's bill as clear and transparent as possible. This, of course, is both consistent with, and pursuant to, the requirements of the FCC's *Truth-in-Billing Order*. For example, third-party charges are aggregated in a separate section of the consumer's bill, along with notification that such charges may be contested without risking phone service continuity. The *Order* requires that each charge be described in sufficient detail for the customer to understand it; and that contact information be provided for each service provider. Some telephone companies have found that, whenever a new charge appears on a customer's bill for the first time, it is helpful to highlight that charge on the first page of the bill with an explanation that it is a new charge from a third-party along with information for contesting the charges. And, as previously mentioned, the use of "Welcome Packages" in which the third-party provider sends information to the customer with specific detail concerning the terms of the purchase provides another level of assurance that the consumer has knowingly agreed to the charges.

The *third-level* of anti-cramming protection afforded to consumers by telephone companies is to provide an instant credit to any customer that notifies the company that there is a charge on their bill that is not recognized and/or unauthorized. The common practice among leading companies in the industry is to eliminate the charge—no questions asked. The goal of this "first-call" approach is to provide the customer with full relief without further hassle. And, while the customer is still on the phone, the company will offer to block further charges from that service provider, and to review prior bills to see if similar charges that previously went unnoticed need to be removed as well. Finally, many leading companies—including AT&T, Fairpoint, Frontier, Verizon and others—offer the customer the option of placing a block on all third-party charges, at no cost.

The *fourth level* of protection involves monitoring and audits. An essential element of cramming prevention is continuous review of cramming complaints to identify problems and to invoke the remediation provisions in the contracts with billing aggregators and individual providers—measures that include financial penalties, suspension of service, or termination of third-party billing services.

These measures, taken together, can have dramatic results. AT&T, for example, through a combination of audits, imposition of financial penalties for each cramming complaint received, and enforcement of complaint thresholds achieved an 89 percent reduction in consumer cramming complaints in a 17-month period—between January 2010 and May 2011.

Nevertheless, as today's hearing demonstrates, the problem of cramming persists. As the technology and sophistication of con artists and scammers increases, "best practices" must evolve, and all parties in the billing chain need to elevate efforts to prevent consumer fraud. Today's forum is an important step in that direction. We appreciate being given the opportunity to be a part of it.

The CHAIRMAN. All right. I thank you very much for that. I need to point out that our two votes of the morning—I think it's two votes—have started. So what I'd like to do is to—first, nobody panic. We'll be back. What we'll do is, we'll let Amy Klobuchar, who has just—

Senator KLOBUCHAR. I have to go.

The CHAIRMAN.—got to go. She has got to go. So do you want to ask a question? Because we could have time for one or two questions. Then we go vote, and then on the second vote, we vote immediately, and then come right back. It should be no more than 15 minutes. Can you live with that? All right.

Senator AYOTTE. Mr. Chairman, why don't you go?

The CHAIRMAN. All right. I will. Attorney General Madigan, the word was used by Mr. McCormick, the word convenience. And I'm very fond of that word because I've been trying to—I'm just a student of Oriental languages and even Zen Buddhism. And I'm trying to figure out what the word convenience means because it's frequently used by telephone companies.

Now, look, you've brought 30 lawsuits against companies. In one of your recent cases last September, you filed against a California company called ID Lifeguards. And this company charged more

than 5,000 of your Illinois citizens at \$12.95 a month for a so-called identity protection service. But when your office contacted these consumers, they told you they'd never authorized these charges, didn't know the charges had gotten on their phone bills, didn't know how, and that's correct, is it not?

Ms. MADIGAN. That is correct, Mr. Chairman.

The CHAIRMAN. Did any—you know, we've had hundreds of companies like this. And where does the word convenience—the telephone companies use the word convenience. They used it at the—when they were talking about, we'll fix it ourselves. They use it now. How has this become a convenience?

Ms. MADIGAN. Mr. Chairman, I think the only people who would describe third-party charges being crammed on phone bills as a convenience might be the carriers, the aggregators, and the vendors. I think, as Ms. Eppley testified, it is not a convenience. It is an enormous and expensive hassle for individuals, businesses, and government agencies, who are constantly having to be aware of the fact they may be crammed, and then go through a very time-consuming process to have these charges removed, you know.

Unlike the testimony that Mr. McCormick gave, we have found that when consumers have tried to remove these charges by contacting their carrier, they're given the run-around. They're told that they can't do anything about it, they'll have to contact the vendor. They had nothing to do with the service and the charge being put there in the first place.

And then, as Ms. Eppley went through the experience that she went through, is very similar to that of the consumers we've talked to. So to give you just a little more detail in terms of our case against ID Lifeguards, there was a 56 percent refund rate, 56 percent.

So in other words, of the, you know, 5,000 plus consumers in the State of Illinois who were crammed, 56 percent of them had the wherewithal to find this and have it removed from their bill. That is a clear indication that it is just outright fraud that's being phased in. I think part of the protection service, I recall, is that they were supposed to be receiving a copy of their credit report. No individuals that we talked to had ever received a copy of their credit report. So understand, there's no convenience. It is a terrible inconvenience. That's just the reality.

The CHAIRMAN. I think you're right. Let me call a 15-minute recess and we will be right back.

[Recessed.]

The CHAIRMAN [presiding]. Attorney General Madigan, let me just finish out my question with you. I am really fascinated—and I want Mr. McCormick to answer this, too. I mean, all we did was the eight largest telephone companies.

Ms. MADIGAN. Yes.

The CHAIRMAN. That's our search. I mean, imagine if we—if we started going elsewhere, how much we'd find, state governments, federal government. Why do they do that? These are huge companies. They make some money from it, yes, but hopefully, they're going to get a lot of bad publicity and embarrassment about it. They made us a promise. They broke that promise.

I don't know whether they—you know, the CEO that I had in my office yesterday, whether he knew about it or not. I don't think he did. So that's the big corporate structure, and it's always the middle people, but they, you know—eventually, everything is money and it's on an account, it's on a report, and the company is responsible for what they do. Why do they do this?

Ms. MADIGAN. Well, Mr. Chairman, obviously, Mr. McCormick's response to this will be enlightening. We wouldn't disagree with you from the perspective, you know, of what we've seen with consumers. There is an obvious financial opportunity for the carriers because they are receiving a portion of those charges that ultimately end up on unsuspecting consumers' phone bills.

The CHAIRMAN. But not that much.

Ms. MADIGAN. Not that much, but this has been going on for 15 years and so, over that period of time, it obviously adds up to, you know—it's some money. And in another way—and another thing you probably need to look at is the fact that landline service is a declining service and many people are now relying solely on the wireless carriers to provide them with their phone service.

And so it may be looked at as, you know, here is one of our last opportunities to earn some money. I don't think that's the proper way to look at it, from a business perspective, and—but that's really all that we can come up with in terms of why they allow this to go on, because consumers are absolutely furious, as—as I stated, and I think others have as well, on the panel.

People are completely unaware of the fact that their phone number can be used as a credit card. I was talking to my husband last night. So the husband of the Illinois Attorney General, who admittedly is—is not a lawyer, doesn't, you know, delve into this—and I explained to him what we were talking about today, and he said, I had no idea that, that could be done.

And so, you know, if the husband of the Illinois attorney general doesn't realize that your phone number can be used, essentially, as a credit card, I would argue, very few to nobody understands that in this country.

The CHAIRMAN. Senator Ayotte and I were talking, going over to vote and coming back, that I don't remember a previous example of when a telephone number becomes the same as a credit card. It can be used as a credit card. Do you know of such instance?

Ms. MADIGAN. No, we don't know of any other instances of this, and you know, clearly, consumers don't realize it, which is why the vast majority of them never even find these unauthorized charges on their phone bill.

The CHAIRMAN. Well, I mean, here is—here is one of the typical, as is AT&T, and I think it's five pages long, and it has got very small print. And in fact, even with my recently corrected glasses, I have to really look hard to find down here which is the cram, that it's USBI. Now, of course, it doesn't say what they're doing. They have a telephone number.

I have no idea what 1-888 plus seven other numbers will get you, but anyway, what they have to pay is \$19.95. And they have to do it every month. And then there's some more stuff that—and you—after page five. I mean, who goes through this? I mean, you do, Ms. Eppey, because you're an American heroine—and an ac-

countant. But here's some more, at the back, at the end. Well, who goes through this?

Ms. MADIGAN. Almost nobody, and Mr. Chairman, so you know, there—the——

The CHAIRMAN. But isn't the point that they shouldn't have to go through it?

Ms. MADIGAN. Absolutely.

The CHAIRMAN. I mean, there shouldn't be the doubt, the suspicion I'm about to be had, so I'm going to go through every single line on this telephone bill, particularly from huge companies like that, that make hundreds of millions of dollars. Mr. McCormick, how do you answer? You promised that you would take care of the problem on a voluntary basis, in such strong language that we, unfortunately for us, to our embarrassment, accepted that. And now, we're in the mess that we're in and nothing has changed. Why do companies do this?

Mr. MCCORMICK. Mr. Chairman, I'm aware of that commitment that was made in the late 1990s, and as I began my testimony today, we agree that this is a continuing problem, and that it needs to be addressed, and we want to work with you on it. Even you asked about what's convenient——

The CHAIRMAN. No, no, that's not the question I asked, is it? We want to continue to work with you on it. I'm aware of the problem. We want to continue to work with you on it. That's more or less what you said 10 years ago, in stronger language.

What I said is, why do they do it? Why does a company as large as AT&T, and this, you know, PepsiCo—there are a whole lot of people on that list that do this and that get this money. Why do they do it? I don't understand it. It's bad publicity. It's scamming. It's called cramming, but it's really scamming. It's con artist stuff. It can't be very good for a telephone company to have that reputation, which we're going to paint right on them.

Mr. MCCORMICK. Mr. Chairman, I can share with you what my companies have told me when I've asked that very question, which is that the system began with a Federal requirement, that it was coupled with State requirements in various states around the country, that it is even unclear today whether or not the industry has the ability in every State to no longer engage in this business. And I believe the staff report that you released this morning indicates that there is some uncertainty in that area. And——

The CHAIRMAN. OK. Let's say there's some uncertainty. Why would they—and I'm not willing to stipulate that at this point, but why would a telephone company take the chance? I mean, to most, there doesn't seem to be a lot of questions. It's illegal. It's wrong. It's scamming. So why would they take that chance?

Mr. MCCORMICK. Well——

The CHAIRMAN. They don't—they don't make that much from it.

Mr. MCCORMICK. Correct, this is——

The CHAIRMAN. So why? Why haven't—why haven't you cleaned up your act? Why haven't—why haven't they just said, stop it, from the CEO right on down, just a little e-mail to about 30 mid-level people, stop it, stop doing it, except for the authorized charges?

Mr. MCCORMICK. I don't know the answer to that question, other than to reinforce what I had mentioned a moment ago about the

fact that it began as a Federal requirement. And again, you know, the industry has taken significant steps. Even the report that you issued today indicates that there has been improvement, but it remains a very, very significant, very pervasive problem and a real challenge, as you indicate, once you identify a scammer, that those scammers quickly come back in another disguise. So it's a very, very significant challenge.

The CHAIRMAN. All right, Senator.

Senator AYOTTE. Thank you very much, Mr. Chairman. I wanted to follow up with Attorney General Madigan. Could you help me a little bit, in terms of, what are the current laws and penalties in place to address cramming and what is it that has been difficult in addressing this through a prosecution route?

You know, I think about when somebody steals from a convenience store, we don't shut down the store. We go after the thieves. So, when you advocate banning all third-party charges, I just want to understand what the difficulties are and why that should be the route versus some other route.

Ms. MADIGAN. Sure. We want to ban third-party charges on phone bills because we have yet to see anything legitimate, in terms of the products or services. People are obviously unaware and it shouldn't be the responsibility of law enforcement to essentially play Whack-a-Mole with these organizations.

You've heard a number of people testify this morning that there might be a law enforcement action that ultimately results in that vendor being kicked off the carrier's billing platform. But they simply reappear with another name and are engaging the exact same activities, so much so that there's actually an entity that we've filed a lawsuit against twice, because you know, we got rid of them once and they reappeared, doing almost exactly the same thing.

And so it is unreasonable, I would argue, that it requires, you know, State-level law enforcement, Federal-level law enforcement to constantly be going after something that is clearly deception and fraud. We end up—and you asked me, of course, about what laws we use. We use our Consumer Protection Act to go after these, the vendors, and again, when we end up going after folks, recognize these are the people who have the wherewithal to eventually contact the Attorney General's office.

The vast majority of people, if they ever become aware of these charges, will call their carrier. Very few of them make it to us. And so at the end of the day, you have to say, well, if we're getting, you know, five complaints about one company, frequently, by the time we start the investigation, they've moved on, because they know they're engaged in fraud and they know that, if there's a significantly high refund rate, there is a chance that they will be thrown off the billing platform.

So they're clever, in the sense that they're constantly reconstituting, changing their name, changing the type of service they're providing, hiding it under, you know, different lines on the phone bills. So I mean, I would liken it to Whack-a-Mole. You've obviously heard that analogy before, but this is, you know, a serious situation that is costing individuals, businesses, and government agencies significant amounts of money every single year.

Senator AYOTTE. And as a follow-up on the Federal end, you said you had been working with the FTC?

Ms. MADIGAN. The FTC has had workshops and obviously been engaged in this over the years.

Senator AYOTTE. And they're also able to pursue these crammers under Federal law as well?

Ms. MADIGAN. And I believe they have. I don't know the details of their lawsuits, but I know that they have had significant actions.

Senator AYOTTE. Because one of the issues, obviously, we would also be interested in looking at, is making sure that the tools—on the law enforcement end, that they have the tools that they need to go after the bad actors. I wanted to follow up with Mr. Burg to ask you. You had said that Vermont originally had a notice statute—

Mr. BURG. Yes.

Senator AYOTTE.—in place that was ineffective. And why wasn't the notice effective? Why did it fail, in your view, when comparing the notice piece versus the ban on the third-party billing?

Mr. BURG. Senator, I think the notice requirements failed because of the extremely low level of understanding of the public about how local phone bills can be used as a way of charging people for unrelated goods and services. So you're—you're not going to open the letter that comes from the vendor if it looks like a piece of junk mail, because why would you?

You're not going to scrutinize your phone bill because it's your phone bill and you're being charged for your phone service; isn't that correct? But it's not correct, because there may be something on there that's unrelated to your phone bill. We have been working for decades to try to get people to scrutinize their credit card account statements, where you can be charged for lots of unrelated things. And that has even been—been difficult, as this committee knows, from the Data-PASS discussions of last year and the year before.

Here, the phone bill is so far afield of normal payment mechanisms for general goods and services, that people are not looking there. And so this is one of the reasons why you have a huge disparity between the number of complaints that are filed and the number of victims that you have, which is sort of a—to have that complaint base as a prerequisite to good law enforcement action, that we find very few complaints, and a huge number of victims, again, not surprising in light of the low level of consumer understanding.

Senator AYOTTE. Can you clarify the process when these notices are sent, to the bad actors that are participating in this?

Mr. BURG. Yes, so it—under—

Senator AYOTTE. If you're a bad actor, do they even send the notices?

Mr. BURG. I mean, there—there are, in our experience, many vendors that have a veneer of legitimacy, who will respond to subpoenas that we send out, who will say, yes, we got consent from everybody that we charged. But in fact, there's no way of determining that. If it's an online sign-up, for example, there's no way of telling whether the data that was used to charge somebody on their phone bill came from the consumer or came from a data file

that was obtained in some other way, without any involvement of the consumer.

So the prior law required these vendors to send a freestanding notice through the mail to consumers. Many of the vendors said, well, we didn't send a letter through the mail, but we had clear notice on our website, so when the consumer signed up, the consumer knew that he or she was going to be billed on the local phone bill. But then, there's no way of telling if the consumer signed up.

And when we did our survey, and there was—this was not coupled with any promise of refunds or anything. I think people in— in our State tend to be pretty straightforward when they're responding to this kind of inquiry. We had just the vast majority of people saying, I don't know what you're talking about, I didn't give consent, I should not have been billed.

Senator AYOTTE. Thank you. Mr. McCormick, I wanted to follow up with you. You had said, in your testimony, that with respect to third-party billing, it is valuable to some businesses and consumers. Can you provide us further information on how it is valuable? And if we were to ban the practice, what are your concerns about the consequences of it?

Attorney General Madigan just said that she hasn't had an experience where there have been legitimate charges, so I'm trying to understand, if you can help me, what your perspective is on any value to the consumer.

Mr. MCCORMICK. Well, first of all, we would absolutely agree that it's not convenient to have an unauthorized charge put on your telephone bill. In the case of Vermont, Mr. Burg testified that, although Vermont moved to ban third-party billing, even there, there were certain exceptions where it was believed to be convenient for the consumer to be able to have certain services aggregated on a single bill.

So any kind of examination in this area, I think, would require some broad understanding of what legitimate businesses do rely upon this third-party billing as both a competitive opportunity and a consumer convenience. So we could try and provide you with more information for the record.

Senator AYOTTE. I would appreciate that, because I think it's important for us to understand if there are some legitimate purposes, what they would be and what are some examples given, the experience we've heard about today from General Madigan. Thank you.

[The information referred to follows:]

Response: Many consumers find it convenient to have their charges for communications-related services consolidated on one bill. Such services include local voice service, long distance service, Internet access, multi-channel video services, wireless, home security services, and services such as voice-mail and call-answering, call-forwarding, and teleconferencing. Such well-known companies as DirecTV, Dish Network, Verizon Wireless, AOL, EarthLink, Juno, NetZero, and online gaming providers such as Gaia Interactive and Blizzard Entertainment, which offers the popular "World of Warcraft" game, provide their services to many consumers by offering the convenience of third-party billing. In addition, the state of Vermont, in enacting anti-cramming legislation, provided the following exceptions from its general prohibition against third-party billing—presumably based upon its determination that they afforded an important consumer convenience:

- Billing for goods or services marketed or sold by a company subject to the jurisdiction of the Vermont Public Service Board;

- Billing for direct dial or dial-around services initiated from the consumer's telephone;
- Operator-assisted calls, collect calls, and telephone services that facilitate communication to or from correctional center inmates.

The CHAIRMAN. Thank you, Senator Ayotte. Senator McCaskill?

**STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. Thank you, Mr. Chairman. Thank you all for being here today and welcome to you. I wanted—like to place on the record, Mr. Chairman, a letter that the Committee received from a company that is based in my state, O'Reilly Auto Parts.

[The information referred to follows:]

O'Reilly Auto Parts
Springfield, MO
www.oreillyauto.com

June 28, 2011

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
U.S. Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller and Committee:

We write this letter on behalf of O'Reilly Automotive Stores, Inc. The Company itself and through various subsidiary entities operates 3,613 auto parts stores in 39 states with a network of 23 supporting distribution centers and 47,495 team members. The parent of O'Reilly Automotive Stores, Inc., O'Reilly Automotive, Inc. is publically traded on the NASDAQ as "ORLY."

Over the years, as our company has grown, we have encountered certain business practices by local exchange carriers commonly referred to as "cramming." The extent of the problem is widespread. We estimate that at least 80 percent of our stores have been billed for some type of "cramming." We believe these practices to be unethical, especially considering the business environment we have encountered when combating this practice.

Of course, our discovery of this practice grew from a careful review of our billing records, not from any need for the services of any third party biller. As we began to understand the nature and scope of this problem in 2000 we determined because of the sheer number of lines the company leased and locations the company had, the only way to stay on top of the issues was to add employees. To assist our telecom manager with this task, in 2000 we hired a second dedicated team member, in 2008 we added a third, and as of October, 2008 the company has employed three (3) full-time and dedicated employees who do nothing but review and analyze local and long distance phone bills for this practice, as well as other erroneous charges, and seek refunds and/or credits.

The analyst group and senior management of the company have long attempted meaningful communication with the carriers about this practice. As you might appreciate, the seemingly endless web of call centers and carrier customer service representatives made it nearly impossible to make progress. After dozens of conversations and endless frustration from our analyst group, we began to look for other ways of handling our requests for cancellation and credit related to this billing. One way was to document the charges in writing and fax our requests to call centers when we were able to get a fax number from a carrier representative.

During our communications with the various carriers, we sought ways to block third party billing to our accounts. Some regional bell operating centers (RBOCs) were willing to find work arounds for this issue others insisted there was nothing they could do about it. We were however astounded and amazed when one of our billing analysts discovered a flyer in an envelope with one of the individual bills we received from one of the carriers who had insisted it was out of their hands. The flyer explained customers could now "block" third party billing. When we approached our assigned account team at the carrier with the flyer, they requested a copy and advised they would have to investigate. We have however followed consistently and persistently with them over a period of 2 years and are now able to

block third party billing from existing accounts. Of course, we believe our ability to do this is a direct result of our tenacity.

The ability to block on existing account however has not allowed us to eradicate the practice of cramming. As a growing company, we frequently open new stores. Typically, we will open in excess of 150 new locations each year. Despite the fact we request a block on third party billing with each new order, we typically see third party charges on the first and or second month's bill from this carrier.

To give the Committee some idea of the pervasiveness of the problem, in 2004 our team tracked and received refunds totaling nearly \$750,000 in erroneous charges billed through local exchange carriers. We estimate approximately 25 percent of the number of erroneous charges was the direct result of cramming. At the height of this problem, some 2 to 2 and one half years ago, a single team member requested over \$3,000 in refunds for erroneous third party charges from AT&T alone, in only one geographic region of our company. When you consider the charges related to cramming are usually between \$5 to \$50 per bill, this example reflects somewhere between 60 and 600 erroneous charges for a single month in a single region. Based on the records we have kept, over the past 10 years, we have averaged about \$1,250 worth of these charges per month for O'Reilly. About one quarter of our dedicated teams' time is spent finding, disputing, and recording the credit request and receipt progress. When we acquired CSK Auto in 2008 and began to audit their statements, we estimate they averaged \$2,500 a month over this same period.

Often, the carriers simply refer you to the third party biller or their third party clearinghouse. Often, they will attempt to persuade that someone within the company signed up for and authorized the services by phone or through the Internet. O'Reilly has consistently trained local store managers and communicated to carriers that local store managers lack the authorization to bind the corporation for these services. While we expect a team member to make a mistake from time to time, we believe our training is effective and view the continuation of cramming a purposeful decision on the part of carriers to circumvent communication to them regarding our corporate authority structure. In addition, our team members do not have store access to the Internet. It seems unlikely they would go home and sign up their store for any of these services. There have been times when recordings have been made to evidence the alleged purchase of services. While some calls sound legitimate, others, in our opinion do not. The carriers or clearinghouses cannot and/or do not ever produce any documentation purporting to actually be signed by an employee with any authority. One might only surmise that doing so results in a pecuniary benefit, not only to the crammers, but to the LEC's.

In summary, the company has and continues to spend its resources managing the issue of cramming with its providers and has done so for over 10 years now. During that time, the company estimates it has obtained refunds and credits for an approximate conservative estimate of \$200,000 at O'Reilly for cramming alone. CSK Auto, Inc. was acquired in 2008 and did not have staff auditing or tracking of these erroneous charges. Based on the condition of their billing when that company was acquired and the audits our O'Reilly teams have done, I estimate they lost approximately \$300,000 over the last ten (10) year period. Overall, third party charges billed to both companies is estimated at \$550,000. Additionally, we estimate three full-time employees have spent roughly 26,000 hours solely on this issue at an additional overhead exposure of approximately \$400,000.

Whether the consumer is an individual or corporation, we view the practice of cramming as unethical and fraudulent. We ask the committee to recommend proposed legislative action to preclude this practice including an express statutory private right of action and include equitable and damage remedies as well as an attorney fee provision and punitive damages based up on a finding that conduct is pervasive, egregious or outrageous.

In addition to the forgoing, we attach exemplars of bills supporting the types of third party billing we receive.

[Attachments to letter not included in the record.]

Sincerely,

JEANENE ASHER,
Director of Telecommunications,
O'Reilly Automotive Stores, Inc.

Senator McCASKILL. And it is quite a tale. For 10 years, O'Reilly, when they began realizing that they were being victimized by extensive cramming, began hiring people full time to do nothing but monitor their billings. They now have three full-time employees

that do nothing but monitor billings. And the experiences they've had with AT&T and others, frankly, are outrageous, how difficult it has been for them to curb this practice.

They now estimate that the 10 years they've been tracking this, over \$200,000 of billings have been tried, have been attempted against their company. They acquired another company just a few years ago and they've done the work on that company. They think they've lost \$300,000, so \$550,000 worth of cramming over a 10-year period, and they're particularly victimized because they open new stores all the time, and their numbers are available to the public.

And it's these small businesses and these various new numbers, that—where these companies obviously are just feasting fraudulently on small businesses. And it is—it is—they've spent \$400,000 on their staff to do this over the 10-year period, but they've netted, you know, \$150,000 or so as they look at what they've tried to do.

Now, most companies don't do this. Most companies just try to beat it out as they can. They try to do their best. So let me turn to you, Mr. McCormick. And I know that you are in an awkward position here because, unfortunately, my wrath is going to probably directed toward you, but we know each other, and I think you know I'm a nice person, and I don't mean to be—to pick on you today, but I need to know how much money the phone companies are making on this, because they're clearly making a boatload of money or they would not put up with this. They are allowing these people to use their platforms to bill because they're getting a piece of the pie. I need to know. How much did AT&T make last year on cramming?

Mr. McCORMICK. Senator, I've been told that the revenues related to third-party billing are about one-tenth of 1 percent of overall industry revenues. I believe that—

Senator McCASKILL. That doesn't tell me how much it was—

Mr. McCORMICK. I believe—

Senator McCASKILL.—because I know how much—

Mr. McCORMICK. I believe—

Senator McCASKILL.—money AT&T is making.

Mr. McCORMICK.—I would have to provide you with the exact figure for the record, but I believe, based upon what I've learned from AT&T, that their revenues from third-party billing amount to about \$50 million a year.

Senator McCASKILL. OK. So the total industry is making \$50 million a year off of it?

Mr. McCORMICK. Well, that would be AT&T.

Senator McCASKILL. AT&T is making—

Mr. McCORMICK. Right.

Senator McCASKILL.—\$50 million?

Mr. McCORMICK. But it—

Senator McCASKILL. Well, that sounds like real money to me.

Mr. McCORMICK.—it's \$50 million for third-party billing. Now, I'm not saying that they make \$50 million off of cramming. I'm saying that they make \$50 million in fees off of performing the third-party billing service, and that overall, for the industry, it is somewhat less than an estimated \$200 million. That would represent about one-tenth of 1 percent of industry revenues.

Senator McCASKILL. It sounds like, to me, that it—that if—either you’re going to take the position it’s de minimis, and then the good reputations of these companies are being maligned in a way that I would think they would consider to be inappropriate, or it’s significant money and they’re willing to bear the burden of this bad practice that’s going on, because ultimately, it’s the consumers that are out there, fighting for their life on every \$1.50 that they see on their phone bill.

Let me ask you this. When my credit card is used, there are a lot of hoops that I’m expected to jump through to use my credit card online. I have to have my—the right billing address. And they have the ability to match up whether or not the billing address is correct. There’s a PIN number that is on my credit card, that I have to use, that tells the company that I actually have the credit card in my possession.

Why don’t the phone companies require these third-party billers to get that kind of identification from these people?

Mr. McCORMICK. Senator, the companies have contracts with the third-party aggregators that require the aggregator not only to authenticate the service provider, but to require that the service provider provide authentication of the actual authorization of the charge. So those contractual commitments are in place.

The telephone companies actually audit those third-party aggregators, but nevertheless, this remains a very significant problem, as the Committee staff report itself found. After three million pages of evidence, it’s very difficult to tell what are and are not authorized charges.

Senator McCASKILL. But the—there’s not a requirement that you give the company that wants to bill—you get a self-identifying number for your phone account from you. There’s nothing there now for that. If somebody calls my house, and my grandchild answers the phone, and they say, do you want to spend \$2 a month to get TV listings in your area delivered to your Internet account or whatever, and my grandson just hangs up the phone, they could start doing that because they can say they’ve called, and somehow they got authorized.

I mean, that’s what they’re doing. Some of them don’t even bother to call. Why don’t these phone companies say, you have to produce—from the person that authorizes these services, they have to produce to you a PIN number that has to match.

Mr. McCORMICK. That may be a very good idea. It’s my understanding that the way in which they require authentication today is through three specific methods. One is true actual recordings of the individual when they’re called, and that they authorized the service.

Number two is through—if it’s done on the Internet through double-click methods, and number three through the delivery of welcome packages that are then accepted. They don’t use PIN numbers like they do with credit cards, but they do have industry standards with regard to authentication.

Senator McCASKILL. Well, I think that, you know, two of those three are very easy to do fraudulently. And frankly, the O’Reilly folks tell me that they’ve listened to some of the recordings, and that they sound about as legit as some of the rhetoric that’s flying

around the capital right now. It—you know, it is—it—you know, I don't think that the recordings are even foolproof and it seems to me this would be a very simple way. Obviously, it has worked for credit cards.

And what you would do is, when you got a phone line, you would get a PIN number with it, and before someone could begin charging your phone number, they would have to be able to produce that PIN number. And I know I'm not giving my PIN number out on anything unless it's something I want. It seems like, to me, that would clean it up pretty quickly and you all could do that on your own without the government getting involved.

Would you mind taking it to your association and finding out what the problem would be with them providing PIN numbers to phone numbers so that the PIN number would have to be used if somebody wanted a third-party billing?

Mr. MCCORMICK. I absolutely will.

Senator McCASKILL. OK. That's great. How many third-party vendors have been disqualified from the—and this will be my last question. I know I'm over time. How many third-party vendors, are you aware, has AT&T disqualified from using their customer's phone numbers?

Mr. MCCORMICK. I don't have a specific number.

Senator McCASKILL. That would be great to find out.

Mr. MCCORMICK. But I can just get that for the record.

[The information referred to follows:]

Response:

- AT&T revenues for 2010 were \$78 million. The projected revenues for 2011 are less than \$50 million.
- AT&T bills for about 550 third party service providers in each of its regions, except for its East region where it bills for about 220 service providers.
- AT&T disqualified 45 service providers in 2010 and 65 in 2011. The company also terminated one billing aggregator in 2011 and suspended one aggregator in 2010 in the SE region. Since 2010, AT&T has received 329 new service provider applications, approximately 200 of which were disqualified by AT&T.

Response: As an industry, we continuously strive to improve the customer experience and to look for the best way to balance the customer's desire for the convenience that third-party billing provides with appropriate steps to prevent unauthorized third-party billing that do not overly burden the customer. Our Board of Directors is open to considering appropriate, additional safeguards, and requiring a merchant or billing aggregator to obtain an additional "check off" from a customer is an idea that we believe merits further consideration. In this regard, a mandatory PIN for authentication is one option, but there could be others, as well, that might better balance the customer's desire for convenience with added protection. PIN authentication has sometimes proven to be cumbersome and frustrating for customers because of lost and forgotten PINs and other customer-related confusion. PINs can also pose operational challenges. For example, the use of PINs would not control issues such as fraudulent marketing, or cramming of additional unauthorized charges after a merchant or billing aggregator initially obtains a customer's PIN.

Senator McCASKILL. I'd like to know how many total third-party vendors AT&T has a contract with. And I'm picking on AT&T because they're the biggest and have the most resources to, in fact, shut this kind of stuff down. And according to O'Reilly, they've been very difficult. In some parts of the country, they still can't block with AT&T. So I would like to find out from—for AT&T, how many—how many third-party vendors they have total and how many they've disqualified annually for the last 5 years. Thank you.

Mr. McCORMICK. Thank you——

Senator McCASKILL. Thank you very much, Walter.

Mr. McCORMICK.—for——

Senator McCASKILL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Boozman?

Senator BOOZMAN. I'll defer to Senator Udall, if he has some——

Senator UDALL. You——

Senator BOOZMAN.—with your permission.

Senator UDALL. You sure? I think he's——

The CHAIRMAN. No, actually, you're—go ahead. You're next.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. OK. Thank you, Senator Boozman, and Chairman Rockefeller. Thank you very much. Once again, you are steering us in the right direction, in terms of consumer protection, and focusing on this hearing, and I very, very much appreciate it. And I appreciate the fact that you have an Attorney General, and an Assistant Attorney General here.

I know that Senator Ayotte was very aggressive in her state, and I know that the both of you are very aggressive in terms of stopping these kinds of scams, and we very much, very much, appreciate your presence here today because I think you bring a—bring a very important perspective.

And I understand, from your testimonies, that almost all consumers who were crammed were unaware of the charges and did not want or use the advertised services. And I think you both recommend the prohibition of third-party charges to landline phones.

The other concern that I have and I—when we get the innovation and the new uses and we have the cell phones going, is looking at cell phones and looking at what's happening there.

And I wonder, do you have any recommendations on how to prevent a problem of this scale, which we're talking about a loss on landline, \$2 billion or more. What can we do, as far as cell phones, affecting third-party billing on cell phones?

Ms. MADIGAN. Well——

Senator UDALL. What is your recommendation?

Ms. MADIGAN.—first of all, let me give you perspectives, Senator, on the overall complaint.

Senator UDALL. All right.

Ms. MADIGAN. According to FCC data, it appears that about, you know, 82 percent of the complaints regarding the landline—16 percent of them are wireless lines. In the State of Illinois, in the Attorney General's office, we've seen very few complaints regarding wireless lines. Our belief is that the wireless carriers are much more vigilant and intolerant of third-party billing. And they've been very aggressive in ensuring that those bills are clean and that they maintain their good reputation.

And so, again, we—I would—would pose that if you ban that opportunity, you will prevent that fraud from migrating from the landline bills to the wireless bills. Many people, at this point, are starting to rely exclusively on wireless service as opposed to landline service. And so your concern is a good one.

What I would tell you is that we haven't seen the problem, at this point, at the level that it exists at the landlines. But it certainly has that opportunity if we don't just cut it off entirely.

Senator UDALL. Mr. Burg, do you have any thoughts?

Mr. BURG. Senator, the one thought I have is that I think it's important, once again, to look at the issue of consumer expectations and whether—in terms of how you can be billed, and for what, and to see if those expectations are the same in the wireless environment as in the landline environment. It may be that, because of the availability of various wireless-related services, apps, and ringtones, and those kinds of things, that can be billed to your wireless account, that people expect to be billed in that way, that an outright prohibition would not be the right way to go.

There are other options. You could have a blocking system. It could be an automatic block when you open a wireless account and then you opt out of that, which would protect the broad public and those people who want to be billed for a whole range of things on their cell phone account—they can do that.

Senator UDALL. Do any other of the panels have any thoughts on this issue that I've raised here?

Mr. SPOFFORD. So related to wireless, Senator?

Senator UDALL. Yes.

Mr. SPOFFORD. Yes, our—our company actually has a service out now which allows people to upload a— a phone bill and detect these third-party charges. And we are seeing an increase on the wireless side. It is nowhere near as bad a problem yet, but due to the legitimacy of many third-party charges on wireless bills, apps, movies, songs you have, et cetera, et cetera, for smart devices, it's going to be a really tough challenge to determine what's legitimate and illegitimate.

We do that, based on actual hard research of every line item charge, so that we can then catalog the bad ones and inform our customers about it. But you know, a broad prohibition on it would be difficult, but it's coming and it's going to get—it's going to get much worse on wireless. And I don't think any legislation on the wireless side is going to affect wireless, actually.

Senator UDALL. Ms. Eppley? Thank you, Senator Rockefeller, and I'd also ask consent to put my opening statement into the record.

The CHAIRMAN. Absolutely.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

I want to thank you, Chairman Rockefeller, for this hearing today and for your leadership in consumer protection.

I was shocked to learn from the investigation and report on "cramming" that this widespread problem has potentially cost Americans billions of dollars of unauthorized charges on their landline telephone bills. Cramming has affected too many New Mexican families, small businesses, nonprofits, and even community health centers. I look forward to hearing from our panel on how cramming can be stopped.

I also want to raise the issue of cramming on cell phone bills. Americans today have over 300 million mobile phones, and consumers increasingly use these phones to make purchases similar to a credit card. News reports highlight an increase in scams that place unauthorized monthly charges on consumers' cell phone bills, leading to "bill shock." A constituent from Santa Fe contacted me after discovering \$170 of fraudulent, unauthorized premium text message charges for a trivia game he did not want and did not sign up for.

I was not surprised to learn that the founders of the company billing him were previously involved in a class action lawsuit for a separate landline cramming scam. The wireless phone company involved did eventually provide a full refund in this case. However, this constituent's concern was that he was probably just one of many people who had been similarly scammed. He told me: "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."

So, I want to thank you again, Chairman Rockefeller, and the witnesses who are here today. It is good to see a state attorney general and assistant attorney general here with us today. They have experience on the ground fighting this type of fraud. I know from my days as attorney general that legitimate companies are happy when fraudsters are shut down. That's because a good business wants a *bad* business, *out* of business.

Senator UDALL. Thank you.

**STATEMENT OF HON. JOHN BOOZMAN,
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. So I really don't have any questions, Mr. Chairman. I appreciate you holding the hearing, and the Ranking Member being here, and participating. This is a problem that I think is going to continue to grow. And it's not just this area.

I know my daughter was telling me the other day—she's a realtor and she had somebody call and say, would you like to increase your sales and your visibility throughout the country? And she said yes, I'd very much like to do that. Well, they took the yes. They were recording it, and took that yes, I'd very much like to do that, and then used that as a justification to add about a hundred dollars a month. I mean, it was very substantial.

So I think that there are just all of these areas, and certainly, wireless is important. I think, in Arkansas, we're 70 percent wireless at this point, something like that, something very dramatic. And you know, as you see that, especially in young people, they just don't have landlines. So it really does all go together and I think it's really important that we discuss it. And you know, we've got a lot of differences of opinion from the panel and the panel is excellent.

We appreciate your being here, and sharing your insights, and many of you, all of you, being on the front lines, really fighting the battle in your own way. I know that the law enforcement—they don't want to see it happen. I know that our phone companies don't want to see it happen also.

The key is, how do you do it in a reasonable way. So thanks again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. It's interesting to me. We have to wind up. It's interesting to me that AT&T itself has been crammed some 80 times. And I guess my question to you, Mr. McCormick, is, you—you're—I mean, I think there's total agreement on this panel, except for you and you're trying to sort of slide it off as happens. But if AT&T itself is being crammed 80 times and they probably don't know about it—but on the other hand, how can they not know about it? Because they have really good auditors, and bill counters, and bean counters, and they're bound to find them.

Why don't we just take a simple thing, and put all of our agony at an end here, try to somehow protect authorized charges, but just get rid of all the rest? Why wouldn't we do that? There's just mil-

lions of sleepless hours for millions of Susan Eppleys. Why go through all the tomfoolery of hedging bets?

Or is this really clear? 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. Why wouldn't—why wouldn't we just ban that, so you wouldn't have to sort of compromise yourself so much as a witness?

Mr. McCORMICK. Mr. Chairman, as you know, in Vermont, with some limited exceptions, the industry supported that legislation. This business of third-party billing represents, as I said, less than one-tenth of 1 percent of all—

The CHAIRMAN. I don't care. You've said that—you see, don't you understand—

Mr. McCORMICK. So—

The CHAIRMAN.—what—how misleading that is? The point is, it doesn't 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? Why not ban it, ban the unauthorized billings, give America a reason to wake up with a smile?

Mr. McCORMICK. Well—

The CHAIRMAN. Don't embarrass the phone companies and all the others that we're going to be investigating, too. Why not?

Mr. McCORMICK. Well, Mr. Chairman, we do ban all unauthorized billings. With regard to banning all third-party billings whatsoever, that's something, as a policy, I'll explore with the industry, to see if that's something the industry would like to support.

The CHAIRMAN. OK. I'll turn to Senator Ayotte, to ask the final question, if she wants to, and then I'll have a closing statement, the last 15 seconds.

Senator AYOTTE. Thank you, Mr. Chairman. And just as a follow-up, Mr. McCormick, I appreciate your willingness to speak with your industry colleagues, and I look forward to your supplement to the question I asked you so that we can have a better understanding of the full consequences of doing so for consumers, as well as businesses.

Attorney General Madigan, Illinois passed a cramming law in 2009, which does not have the complete ban on third-party billing. So can you help us understand? You're here asking us to do a complete ban on third-party billing. What hasn't worked in your law? And what has brought you to this position today?

Ms. MADIGAN. Senator, as I mentioned, when we've brought our lawsuits, all 30 of them, we've used our Consumer Fraud Act. Even though that new law has been passed, we have yet to use it.

The reason that we're here today is, we would like to be more like Vermont because Vermont has been successful in being able to pass an outright ban and it is insane that we have to spend countless hours, I mean, in a slightly similar way to what Ms. Eppley does. We take in hundreds of complaints. We file a lawsuit, eventu-

ally, after we do a thorough investigation, and then, you know, we get restitution for, you know, many of those consumers, but not nearly all of those consumers.

Response: We share the Committee's desire to stop unscrupulous merchants from bilking our customers by charging them for goods and services they have not actually and knowingly purchased, and we support our customers' right to be fully informed about what they are being billed for. As the Committee is aware, on July 12, 2011 the FCC issued a Notice of Proposed Rulemaking seeking comment on additional steps it is considering to further curb cramming and to protect consumers of both wireline and wireless carriers. Several of the steps the FCC proposes are interesting and deserving of full consideration, which the industry looks forward to providing. We hope to engage in a constructive dialogue with the FCC in the context of the NPRM.

We believe the best course here would be to allow the FCC, as the agency of expertise, to complete its rulemaking process before Congress decides whether additional statutory mandates are necessary. But if the Committee proceeds to consider legislation in advance of FCC action, we would urge that any proposed legislation focus narrowly on preventing unauthorized charges while recognizing that some services provided to end users through third party billing (*e.g.*, wireless, DSL, video, satellite, and calls originating from within correctional facilities) provide a valuable service to consumers. To that end, the industry has formed a working group to examine current practices and to discuss potential legislative and regulatory measures intended to further protect against unauthorized charges while balancing customer convenience and harm to legitimate businesses. The testimony of Vermont Assistant Attorney General Burg about his state's new statute described what could be a useful model for Federal legislation, and the industry working group will consider the Vermont law and other possible approaches in our effort to assist the Committee in pursuing the best approaches to protect our customers from being charged for goods or services they did not consent to purchasing.

What we have seen repeatedly, and—and what you've heard everyone testify to today is that consumers don't know that their phone bill can be used like a credit card account. Consumers end up with services and products crammed on their phone bill they never asked for, and ultimately, because they never asked for them, they never knew they were paying for them, and they never used them.

The way to eliminate that, without having to go through, you know, the heroic efforts of most people on this panel, is to simply ban these third-party charges. And yes, there are some exceptions, you know—operator assistance, dial-around services. There are certain things that—that everybody knows what those exceptions are. Those are things that individual consumers or businesses, if they want, affirmatively ask to be put on their bill.

It is not some secret mystery that ends up crammed onto their bill, when all they've done is—you know, put their name, their address, and their telephone number into an online solicitation to get coupons. And that seems to be the way that many people, at least on the Internet, end up being charged for these things, if they were on the Internet at all, if it wasn't just outright fraud. So because of the enormous level of fraud and deception that really, I would say, is—is the entire industry here, it should just be banned outright.

Senator AYOTTE. And as one final follow-up to Mr. McCormick, if an industry is having to follow a whole host of different State laws in this area, say, you've got to follow the law that Illinois passed, I assume this is what you're dealing with. You don't have preemption in this area.

As this committee draws its conclusions from Chairman Rockefeller's report, what is your industry's view on having one Federal standard, whether it's the banning of third-party or some other solution? Senator McCaskill raised one here. What's your perspective on that?

Mr. McCORMICK. Senator, this is primarily a national business and as these issues have come up, we really have been looking to the FTC as the principal regulatory agency. So it's a great benefit to our industry to have a single mission-like standard.

The CHAIRMAN. OK.

Senator AYOTTE. Again, I have to ask the Attorney General—if you have any preemption concerns here, if we come up with a solution?

Ms. MADIGAN. We always have preemption concerns at the State level and I think there was somebody who—who kindly mentioned the fact that, you know, you would want to make sure—and I think it was you—that, you know, while the Federal regulators had authority to do whatever they needed to do against cramming, that the States are not stripped of that authority, because far too frequently, unfortunately, we find that when the solution is one at the Federal level and the States are preempted, it oftentimes is not strong enough for us to contend with the on-the-ground problems that we have in the States.

Senator AYOTTE. Thank you.

The CHAIRMAN. Let me just close by a couple things: one, thanking all of you very much for being here on what I think is a classic American problem. I mean, we're not talking about the war in Afghanistan here. We're not talking about raising the debt ceiling. I grant that. But we are talking about something which is profoundly troubling and disturbing to millions of Americans. And it's also unnecessary.

I mean, I thought what we were meant to do is try to clear up problems here and 10 years ago, the telephone industry came to us and said, we'll clear up the problems because they really make us look bad if we don't, and therefore, you can trust us to do it. And they didn't.

So all I'm saying is that we're going to stick with this. You know, the FCC stated yesterday that it's now seeking comment on whether a ban to third-party billing, you know, that—I appreciate that and they settle things. They have—don't they have some settlements, the FTC? But that's all stuff that's already done and it also is an admission of guilt. I mean, if you settle something, to me, it's an admission of guilt. I'm not a lawyer. Attorney General Madigan, I want you to know that. But that's the way I read it.

So anyway, in the near future, I plan to introduce, working with colleagues from both sides of the aisle, legislation that will put a stop to this, because I simply cannot find any grain of sense in us having to have a hearing like this and have all the Susan Eppleys—Mr. Spofford, you haven't got enough of the spotlight. But you know, Susan Eppley's just better looking than you are. That's all.

Mr. SPOFFORD. No argument.

The CHAIRMAN. You know. But I mean, why put her through that, and the millions of others? Why put people through that? It

doesn't make any sense. It isn't going to change the future of the nation, but it's going to change a whole lot of household functioning and ability to survive in truly horrible economic times, which are going to be with us for quite some time—would be my guess.

So I don't think we should mess around with this. Let's not worry about whether something is convenient or not or whether something's a quarter of 1 percent or not. Let's just—let's say, if there are certain authorized things that are—that should be done, let's work on that, and figure that out, and then take the rest, and just ban it. So with that neutral statement, this hearing is adjourned.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
LISA MADIGAN

Question 1. The Commerce Committee's investigation and the FCC's new proposed rules focus mostly on wireline cramming. You testified that approximately 16 percent of cramming complaints are filed to dispute wireless bill charges. Do you think we need better rules to protect wireless consumers from being crammed?

Answer. I was reciting a statistic from a recent FCC release in which the FCC indicates that 16 percent of its phone bill cramming consumer complaints pertain to wireless phone bill cramming.

As we move toward using our wireless devices as payment mechanisms and this type of billing mechanism begins to take root, I think the area of third party billing on wireless phone bills needs to be studied further to determine whether consumers are being adequately protected from cramming on their wireless phone bills.

Question 2. Cramming takes some technical know-how and a willingness to engage in clearly fraudulent practices. Is there evidence from your investigations that some of these offenders may be tied to organized criminal networks, or are they mostly operating on their own?

Answer. My investigations have not revealed whether or not the defendants are tied to organized criminal networks.

Question 3. You have advocated for better billing practices and successfully championed passage of an Illinois law in 2009 that includes the very important requirement that a third party cannot charge a consumer until consumer consent is verified by the telephone service provider before any charges are billed. What do you consider to be the most effective parts of this legislation? How do the new laws affect the number and severity of cramming crimes and abuses? In your experience, did this law lead service providers to drastically change their disclosure practices?

Answer. My office did not draft or push for the law. Rather, upon request, I helped shape the final legislative language after the framework for the bill had already been established by the sponsor and stakeholders. It was a compromise piece of legislation that did not go as far as I would have liked.

The Office of the Illinois Attorney General has brought successful enforcement actions against phone bill crammers using the general language in Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act. The lawsuits basically allege that vendors have placed unauthorized charges on consumers' phone bills, and that it is an unfair and deceptive practice to do so. The basis for the claims of unauthorized charges is that the sales pitches are deceptive, and that if any attempt is made to verify the order, it is inadequate, because it fails to demonstrate that the phone bill subscriber knowingly authorized a purchase to be billed to his or her telephone bill. My office's investigations routinely reveal a low level of customer awareness of the charges and a high refund rate among customers who have become aware of the charges.

815 ILCS 505/2HHH, effective in 2009, provided specific guidance as to what authorization and verification must be completed in order to have a legitimate sale to be billed on the phone bill.

It does not appear that the new law has caused service providers to change their stated procedures. The billing aggregators and carriers have claimed for over a dozen years now that they have procedures in place to protect against phone bill cramming, including the procedures required by Section 2HHH.

Question 4. In your experience, are U.S. Telecom's "Best Practices" guidelines sufficient to combat cramming or are legal protections necessary?

Answer. The industry best practices do contain some steps that can be helpful to detect fraud, but they are not sufficient to combat cramming. As I referenced in my oral and written testimony, my experience indicates that, although the billing aggregators and the LECs may request the marketing materials their clients use,

no substantive review of the marketing materials or marketing methods is taking place.

Other aspects of the best practices, such as searching for cramming complaints or whether the named president of the company has engaged in cramming before, are unlikely to yield any significant results, as it is quite simple for a company to dissolve and resurface with a new company name, address, and named president while retaining substantially the same products and sales practices.

The bottom line is that my investigations uniformly reveal numerous consumers who do not even know they are being billed on their phone bills for third party products or services. If they do discover these charges, they seek refunds and bill credits because they do not want or use these products and did not authorize their purchase. It could be that the best practices are ineffective, or that they are not being enforced, but my experience has been that they are not sufficient to combat phone bill cramming.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
LISA MADIGAN

Question 1. Do you believe Federal legislation regarding cramming is needed? What provisions would you advocate that potential legislation include and why?

Question 2. You are an advocate for a ban on third party billing on telephone bills. Can you explain how you arrived at this course of action?

Question 3. Do you believe there are legitimate uses of third party billing that should be exempted from a comprehensive ban? If so, what are they?

Question 4. How best can we separate the good actors in this market who play by the rules from the bad actors that do not?

Answer. My oral and written testimony call for federal or state legislation banning third party billing, with certain appropriate exceptions for regulated services such as operator-assisted calls and long distance calls.

My office's experience over the last 15 years or so is that third party vendors just haven't gotten it right, many times employing fraudulent marketing practices that do not apprise consumers that they are making a purchasing decision. On top of that, they peddle products and services that no one wants or uses. The billing aggregators and LECs have failed to come up with any meaningful efforts to correct the vendors' practices.

Phone bill cramming will not stop until third party billing stops. I recognize that some exemptions may be appropriate for products and services that are regulated by the Illinois Commerce Commission and/or the Federal Communications Commission, such as operator assisted calls, long distance service, and dial around services, and the ban that I call for would allow for appropriate exemptions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO
LISA MADIGAN

Question 1. Attorney General Madigan, what are the penalties under Federal law for conducting cramming operations? What are the success rates for prosecuting crammers and do you have the resources and manpower to go beyond the low-hanging fruit. Is prosecution an effective option for smaller actors as well as the larger operations?

Answer. Under certain circumstances, the Federal Trade Commission has authority to request civil penalties in its actions in Federal court, which can bring up to \$16,000 per violation.

Despite the numerous law enforcement actions against crammers by my office, the FTC, and other states, cramming continues. Although individual law enforcement actions may be successful in removing a specific vendor from the market, any number of similar vendors can and do reappear in the same space.

It simply is not a good use of limited law enforcement resources to continue to file cramming cases against individual vendors for billing consumers on their phone bills for products and services no one wants, never uses, and never agreed to purchase, let alone be billed for on their phone bill.

Even after questions have been raised publicly about whether third party billing has any legitimate uses, no one from the billing or vendor industry has come forward to provide examples of products and services that consumers both want, and want to be billed for via their landline telephone bill.

Phone bill cramming will not disappear until third party billing disappears.

Question 2. Attorney General Madigan, Illinois passed a law to address cramming in 2009 that was not a complete ban. You wholeheartedly supported this ban at the time, but are now suggested we need a complete ban. Is the 2009 law not working? Where is it lacking?

Answer. Upon request, I helped shape the final legislative language after the framework for the bill had already been established by the sponsor and stakeholders. It was a compromise piece of legislation that did not go as far as I would have liked.

Basic consumer law and advertising law principles in place for dozens of years require clear and conspicuous disclosure of material terms and conditions of a seller's offer, followed by explicit acceptance of the offer. This legislation merely codifies and provides a few specifics to what already was the law. My office brought numerous law enforcement actions before the legislation became effective by using the general consumer protection authority in the Consumer Fraud and Deceptive Business Practices Act.

The lawsuits typically allege that consumers were billed for products or services they did not want, did not use, and did not agree to buy or be billed for on their phone bills. These billings occurred as a result of deceptive (and in some cases, non-existent) sales pitches.

It is my opinion that the 2009 law has had no effect on phone bill cramming.

Question 3. Attorney General Madigan, what more can be done to educate the consumer about the existence of these charges, to keep a close eye on monthly telephone statements, and know where to complain to be removed any unauthorized charges on their bill?

Answer. My office does try to educate consumers to read their monthly telephone statements and to contact my office for assistance with removing unauthorized charges. Phone bills provide the name, and often a phone number, for third parties whose charges appear on the phone bill.

In addition, my Office's outreach bureau provides consumer tips on avoiding and detecting phone bill cramming, and we are highlighting phone bill cramming in my office's booth at the Illinois State Fair.

Even though consumer education is an important preventative tool, frankly, consumers should not have to constantly police their phone bills from a barrage of fraudulent charges and try to figure out how to have them removed. The fraudulent charges should not be on the bill in the first place, and the LECs and the billing aggregators have failed to stop phone bill cramming despite their efforts over more than a dozen years.

Question 4. Attorney General Madigan, According to your testimony, the "only piece of information" that vendors have to provide to billing aggregators to process a transaction is "the consumer's telephone number." However, after reviewing some of the comments filed at the recent FTC Workshop on cramming, some LECs require that:

- The customer must provide explicit consent to the purchase and to have the service billed to the customer's telephone bill.
- The customer's authorization must be documented by either (a) a written document signed and dated by the customer (or an electronic confirmation that is valid under the law of the state in which the customer resides); or (b) a recorded verbal authorization by the customer, which must be obtained by an independent third-party.
- For Internet-based transactions, in addition to the above, the following information must be obtained from the customer:
 - a. First and last name;
 - b. Billing Telephone Number ("BTN");
 - c. Address, including street, city, state and zip code;
 - d. Confirmation of legal age and authority to bill to telephone account; and
 - e. Some form of "non-public" information, such as date of birth or last four digits of Social Security Number.
 - f. The clearinghouse or an independent provider must then verify the accuracy of the customer's information using "an established and reputable database provider" (e.g., LEXIS, Experian).

Are these requirements helpful? Are the LECs in Illinois implementing similar requirements? If so, is the problem that the vendors are gaming the requirements or that the LECs aren't sufficiently policing compliance and/or auditing submissions?

Answer. Technically, all that one needs is the billing telephone number. That is what the billing aggregator transmits to the LEC to effectuate the billing.

The LECs say they follow various procedures to check out potential customers before allowing them onto the billing platform and have various rules about marketing that its clients are required to follow. Some of the LECs' procedures and rules are relatively new, implemented as recently as 2010.

The overarching problem of deceptive sales pitches remains. Consumers do not understand they are making a purchasing decision, or that they will be billed on their telephone bill.

If someone thinks he is filling out an entry form for a chance to win a flat screen TV or a DVD player, he provides certain information for that purpose, including the information the LECs say they require. If a small business owner or not for profit company or church, or a receptionist who works for one of these entities answers the phone and accepts what he thinks is an offer for a free yellow pages listing, or an update to an existing yellow pages listing, or to receive written information about an offer, he is going to be willing to provide some contact information for that purpose. All of these scenarios involve obtaining the required information from someone who, because of a deceptive sales pitch, has no idea that he is making a purchasing decision, much less authorizing billing on his phone bill.

As for verifying the name, address, and phone number through LEXIS or a similar service, that may serve to cut back on specific types of cramming. For example, where someone (someone who works for the vendor, or a lead generator for the vendor) submits to the vendor a name, telephone number, and address that are completely fabricated, running the order through a LEXIS-type service may help identify these orders as fraudulent because the name, address, and telephone number may not match up. Those non-matching orders can be rejected. However, if the vendor or lead generator has access to any public record data base, of which there are many, it can falsify orders easily with matching information that would not be detected by running them through LEXIS.

As for the requirement to obtain explicit consent and documentation of that consent, my experience is that requirement is not meaningfully implemented or policed. As I indicated in my testimony, I have seen numerous deceptive sales pitches disseminated via a variety of marketing methods.

The LECs and the billing aggregators both claim to review marketing materials, but as I indicated, based on investigations that my office has done, it does not appear that any real review is taking place. I have requested marketing materials from billing aggregators for specific vendors, and have found deceptive telemarketing scripts and Internet sign up portals that aren't even actually used for customer sign up. The billing aggregator in some cases does not seem to know what the sign up page looks like online or have screen shots.

On top of suspicious marketing materials, it does not appear that anyone is checking to see whether vendors are marketing as they represented, or whether the actual sales pitches as implemented follow basic consumer and advertising law principles of disclosing material terms and conditions clearly and conspicuously.

As I stated in my testimony, deceptive sales pitches for products and services that no one wants or agreed to pay for at all, let alone via his telephone bill, have been occurring for over a dozen years. No set of best practices has fixed it, and no amount of law enforcement suits can fix it. This problem will not go away until LEC billing goes away.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
ELLIOT BURG

Question 1. In your testimony you mentioned that wireless anti-cramming rules would differ from those intended to combat wireline cramming. One potential measure you suggested was an automatic block on third party charges that consumers could opt out of if they so choose. Do you think we need better rules to protect wireless consumers from being crammed?

Answer. In a word, yes. Third party billing on wireless telephone bills is a largely unregulated area of commerce in a growing market; and despite the fact that at present, most cramming complaints concern landline bills, a not insignificant percentage of cramming complaints arise in the wireless sector.

For example, the Federal Communications Commission ("FCC") has reported that 16 percent of the cramming complaints it received in 2008–2010 involved wireless

cramming.¹ In 2010, approximately 10 percent of the cramming complaints received by the Federal Trade Commission (“FTC”) occurred in the wireless environment.² The comparable figures for wireless cramming complaints received by the California Public Utilities Commission in 2009–2010,³ the Florida Attorney General’s Office in 2006–March 2011,⁴ and the Vermont Attorney General’s Office in 2005–2011, were 5 percent, 24 percent, and 16 percent, respectively. In addition, as noted in the Commerce Committee’s recent staff report on cramming, earlier this year the State of Texas and Verizon Wireless filed separate lawsuits against defendants accused of large-scale cramming to consumers’ wireless bills.⁵

The long-term impact of wireless cramming should also be considered in light of the current growth of mobile commerce, which sector is expected to reach \$31 billion by 2016.⁶ As more Americans opt to use their mobile phones to pay for phone-related goods and services such as games, apps, ringtones and wallpapers, as well as for unrelated consumer goods,⁷ the potential for fraud may well increase.

Question 2. What would this legislation look like compared to wireline legislation?

Answer. Given the likelihood that many wireless subscribers are aware of—and may desire—the availability of their mobile phone account to pay for unrelated goods and services, it does not seem appropriate to *prohibit* third-party charges, as has been done by statute in Vermont for landline bills. However, there are a number of steps short of a ban that could be taken to ensure that consumers are not crammed on their wireless bills. These include:

- Most effectively, *blocking such charges* unless and until the consumer *opts out* of the block. The need to opt out before being charged will ensure that consumers are informed of the potential for being charged, and that only those consumers who agree to the use of their wireless bill for that purpose will be subject to such charges.
- Introducing an “*adjust first*” requirement, whereby wireless companies must issue credits immediately to all customers with cramming complaints, but can then seek reimbursement from the aggregator or third-party merchant.
- Requiring a “*double opt-in*,” perhaps with a PIN, whereby consumers must give consent once, and then separately confirm their consent, before being billed by a third party.
- Requiring that wireless companies *periodically report on the cramming complaints they have received* to a designated governmental agency, so that the extent of cramming can be gauged and cases of cramming investigated as appropriate.⁸
- *Imposing strict liability on billing aggregators, and some form of liability on carriers*, that extend beyond simply restoring consumer losses due to wireless cramming. Vermont law now renders billing aggregators potentially liable for consumer restitution and civil penalties when their merchant-clients violate the ban on third-party charges on local (landline) telephone bills. Extending such liability to the wireless environment, and in some form to wireless carriers, should incentivize those companies to screen the merchants whose charges they propose to facilitate.

Other measures, such as *prominent billing disclosures* and *mandatory due diligence* by wireless companies in screening merchants before third-party charges are

¹FCC, Notice of Proposed Rulemaking, *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), and *Truth-in-Billing and Billing Format* (CC Docket No. 98–170) (“FCC NPRM”), at 4 n. 11 (July 12, 2011).

²*Id.*

³*Id.* at 12.

⁴E-mail from Keith P. Vanden Dooren, Special Counsel, Office of the Florida Attorney General, Economic Crime Division (Aug. 9, 2011).

⁵Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, Majority Staff Report for Chairman Rockefeller, *Unauthorized Charges on Telephone Bills*, at 6 (July 12, 2011).

⁶AOL Tech, “Forrester: U.S. Mobile Commerce To Reach \$31 Billion By 2016,” <http://techcrunch.com/2011/06/17/forrester-u-s-mobile-commerce-to-reach-31-billion-by-2016/>.

⁷See, e.g., Rimma Kats, “Office Depot expands mcommerce reach via business app,” <http://www.mobilecommercedaily.com/> (describing how retailer is now offering a mobile application designed to allow its contract customers to “browse, research, buy and approve office supply orders via their smartphones”).

⁸California’s Public Utilities Commission recently required wireless carriers and billing aggregators to report the cramming complaints received by their customers. See FCC NPRM at 11.

applied, might also be considered, but I believe they are much less likely to prevent cramming than the recommendations described above.

Question 3. In the last decade, state attorney generals and federal authorities have charged cramming companies with bilking consumers out of tens of millions of dollars. Do you believe that we are getting the bad actors or is the problem so large that enforcement actions will only address a small percentage of the illegal activity going on?

Answer. I believe that law enforcement agencies are seeing, and reaching, only the tip of the iceberg, in several senses. First, the number of third-party merchants whose charges appear on consumers' local telephone bills is very large, and there is no way that any single state attorney general's office, group of AGs' offices, or federal agency can take legal action against most of them. Second, the resources available to state law enforcement agencies are limited; even if one state, or several states, take action against a cramming merchant, that company may avoid sanctions, and continue to do its customary business, in the rest of the country. Third, it is in any event difficult for law enforcement agencies to make consumer victims entirely whole, returning to them all the money they have lost; although Vermont has made full restitution a priority in its settlements with third-party merchants, there is a substantial risk that insisting on such an outcome in other cases will cause the merchants to refuse to settle, leaving the government with no option but resource-intensive litigation (and a diminished capacity to pursue other wrongdoers).

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK PRYOR TO
ELLIOT BURG

Question 1. Do you believe Federal legislation regarding cramming is needed? What provisions would you advocate that potential legislation include and why?

Answer. Yes, and I think specifically that federal legislation, initially in the area of landline billing, holds the potential for extending to the Nation the kind of protection of consumers from cramming that Vermont has introduced at the state level.

By way of explanation, as noted in my oral and written testimony before the Commerce Committee, the level of consumer awareness about third-party charges on local telephone bills is very low; and the incidence of cramming is very high. Specifically, the ongoing investigation of cramming by the Vermont Attorney General's Office found—among other things—that only an estimated 27.4 percent of consumer survey respondents whose local telephone bills contained a third-party charge noticed the charge even within the first 3 months of its appearance on their telephone bill; and fully 89.5 percent stated that they had not agreed to be charged for the third-party services that appeared on their bill. In fact, a number of these consumers stated that they had no reason to order the services for which they were charged, giving such explanations as, “[I] have an answering machine [and so] would never use this service,” “I had voice-mail from the phone company [and] did not need [another service],” and “[I] can’t imagine agreeing to voice-mail since we have always had a personal voice recorder.”

In light of numbers such as these, it is unreasonable to expect consumers to scrutinize their phone bills for unexpected charges. Indeed, a ten-year statutory requirement in Vermont that third-party merchants mail to consumers and businesses a free-standing notice of upcoming charges on their local phone bill . . . now supplanted by the state’s outright ban on such charges . . . was ineffective in creating a high level of awareness of such billings or a low level of cramming. Whether consumers did not read or understand the notices, or merchants did not actually send them, or the possibility of an unrelated charge assessed on a local phone bill was just beyond most people’s reasonable expectation . . . this serious attempt to use disclosure to cure cramming did not work.

By contrast, the simplest, and most effective, way to address cramming in the landline context is to prohibit third-party charges, with reasonable but narrow exceptions, such as direct dial or dial-around services initiated from the subscriber’s telephone, and operator-assisted and collect calls. This approach, adopted in May 2011 by statute in Vermont, takes into account the overwhelming lack of consumer awareness of the potential for third-party charges on local phone bills but also leaves merchants free to bill consumers through the more familiar channels of credit cards, debit cards, checks, electronic funds transfers, and PayPal.

Question 2. You are an advocate for a ban on third party billing on telephone bills. Can you explain how you arrived at this course of action?

Answer. To clarify, the State of Vermont has instituted a ban on most third-party charges to landline bills. The rationale underlying that measure is set out in my response to no. 1.

Question 3. Do you believe there are legitimate uses of third party billing that should be exempted from a comprehensive ban? If so, what are they?

Answer. Vermont law contains the following exemptions from its prohibition on third-party charges on landline bills, which represent types of charges that law-makers believed consumers could reasonably expect to appear on their local telephone bill:

- Billing for goods or services marketed or sold by a company subject to the jurisdiction of the Vermont Public Service Board (the state utilities regulator);
- Billing for direct dial or dial-around services initiated from the consumer's telephone; and
- Operator-assisted telephone calls, collect calls, and telephone services that facilitate communication to or from correctional center inmates.

Question 4. How best can we separate the good actors in this market who play by the rules from the bad actors that do not?

Answer. In the third-party merchant world, the good actors are either companies that sell services that consumers reasonably expect may be charged on their local telephone bills, or companies that choose some other billing method that consumers reasonably expect may be used, such as a credit or debt card. Merchants that use a billing method that runs counter to normal expectations are, I would submit, not good actors.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. KELLY AYOTTE TO
ELLIOT BURG

Question. Vermont clearly has a very aggressive law on cramming. What are some of the difficulties you face in your enforcement actions against the practice of cramming?

Answer. As noted in my response to Senator Klobuchar, law enforcement agencies face several significant hurdles in their efforts to address landline cramming. These include the very large number of third-party merchants whose charges appear on consumers' local telephone bills, relative to the limited resources available to work the issue; the fact that only some states are in a position to take enforcement action, leaving other jurisdictions open to cramming; and the difficulties that exist in trying to make consumer victims entirely whole. Without a national ban on third-party charges to local landline bills, I believe that large numbers of American consumers will continue to be crammed, losses will continue to mount, and crammers will continue to profit.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
DAVID SPOFFORD

Question 1. You testified in last week's cramming hearing that your company is seeing an increase in wireless cramming charges. How drastically have these types of charges increased in the past few years? Please offer statistics.

Answer. We have only begun to compile these numbers recently. I believe less than 5 percent of wireless invoices have cramming charges.

Question 2. Do you believe stronger rules are or will be necessary to combat wireless cramming?

Answer. It is too early to tell at this time.

Question 3. How would these rules differ from wireline rules? What might that legislation look like?

Answer. The banning of these charges in the wireless arena might have more unintended consequences for consumers and actually hinder convenience since there are more legitimate 3rd party charges for smart phones than for landline phones.

Question 4. Your business exists to help other businesses sort through and minimize telecom charges and expenses, and one of your services is disputing third party charges placed on phone bills. How big a problem are cramming charges for your medium and small business clients?

Answer. For landline customers, the problems are similar in medium size businesses. We don't serve small business clients for landline services.

Question 5. Do these companies have the resources to go through their bills with a fine-tooth comb?

Answer. No

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK PRYOR TO
DAVID SPOFFORD

Question. In your written testimony, you cited some eye opening statistics about the prevalence of cramming. What steps would you recommend for this committee to consider taking to address the problem?

Answer. Respectfully, I really don't know. Taking away any carrier liability protection so that the carrier billing for the third party charges is not protected by tariffs or other liability limits might be a "free market" solution. The carriers often write and use tariffs to protect themselves from erroneous billing claims and other liability. Taking away this protection might force them to abandon the practice due to increased legal and financial exposure or to do a better job auditing and vetting the third party billers. The regulatory solution would be an outright ban. Unfortunately, this will create a precedent when you are confronted with similar challenges in wireless billing where third party charges are often legitimate—thus "hurting" consumers by making services less convenient to pay for. The free market solution might be easier to universally apply. That being said, I have no training in law or legislation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO
DAVID SPOFFORD

Question 1. Mr. Spofford, if a company is made liable for fraudulent charges once notified by the consumer, should they also be responsible retrospectively?

Answer. Yes. Unless the company (carrier or third party biller) can demonstrate with certainty that the consumer ordered the service being billed for, the company should be held liable for all prior charges.

Question 2. Should companies only incur liability if they fail to audit or vet 3rd party billers?

Answer. No. My understanding is that the carriers already claim to audit or vet 3rd party billers. This apparently hasn't worked. Unless carriers shoulder liability it seems unlikely they will perform adequate audits that only result in a decrease of profit to them.

Question 3. Mr. Spofford, what is the typical experience you have with telephone companies and vendors when you have attempted to removed third-party charges from your clients' phone bills?

Answer. Typically, removal of third party charges requires 2 to 3 phone calls or transfers and possibly some follow-up calls if the removals/credits do not appear to be implemented in a timely fashion.

Question 4. Can you give me some examples of how much money your clients were being cheated out of annually?

Answer. The largest amount of improper third party billing for one Xigo Client was a total \$140,514.

Question 5. Were the unauthorized third-party charges always refunded?

Answer. Unauthorized charges disputed by Xigo are normally stopped by the third party companies—however in some cases these charges continue for 2–3 months. Our statistics show that 93 percent of disputes were accepted and closed. However, generally, third parties are only willing to refund 2–3 months of charges.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
WALTER B. MCCORMICK, JR.

Question 1. Since all guidelines required by U.S. Telecom must be approved by representatives from telecom companies, each rule is essentially a voluntary measure. Cramming has been on the rise since the 1999 "Truth-in-Billing" guidelines were implemented. How would you suggest changing phone bill regulations to further clarify charge descriptions for consumers? How would you suggest mandating that telecommunications providers offer bills that clearly indicate third party charges, even if they stand to lose profits from the clarification?

Answer. To be clear, the "Truth-in-Billing" Order adopted by the FCC in 1999 establishes mandatory obligations on carriers with respect to providing clear billing

information to customers. These rules require telephone companies to have bills that:

- (i) are clearly organized, clearly identify the service provider, and highlight any new service providers;
- (ii) contain full and non-misleading descriptions of charges that appear therein; and
- (iii) contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.

To further clarify, the *Anti-Cramming Best Practices Guidelines* are not “required by U.S. Telecom,” which does not conduct programs involving standard-setting, certification, or auditing for the industry. Rather, these *Best Practices Guidelines* were developed and adopted by individual companies in response to a challenge issued by then-FCC Chairman Bill Kennard to reduce or eliminate the cramming problem. These voluntary industry best practices go beyond the FCC’s “Truth in Billing” requirements with the aim of further preventing bad actors from obtaining access to the consumer’s bill, identifying cases of fraud quickly, and simplifying and expediting consumers’ ability to obtain refunds in those instances where they have paid unauthorized charges.

We do not believe that bill format is the primary cause of unauthorized charges. As Illinois Attorney General Lisa Madigan’s testimony acknowledged at the hearing, the industry’s *Best Practices Guidelines* appeared to reduce the incidence of cramming until about three or 4 years ago. In response to an apparent rise in complaints in more recent years, many of our member companies have strengthened their practices to combat cramming. These companies have practices in place to clearly identify third party charges on subscriber bills, such as separate identification on the first page of the bill, separate billing page detailing all third-party charges, providing contact information, and noting new charges by an asterisk. Other controls, focused directly on aggregators and third-party providers, also appear to have been successful. AT&T, for example, achieved an 89 percent reduction in consumer cramming complaints in a 17-month period—from January 2010 to May 2011—following the imposition of audit requirements, financial penalties for each cramming complaint it receives, and more aggressive complaint thresholds.

Bill clarity is important. It improves customer service by reducing the number of inquiries our companies receive. Bill quality, including clarity and absence of erroneous or unauthorized charges, is a major factor in overall customer satisfaction. As a result, telephone companies have a natural incentive to provide subscribers accurate and clear information on their bills.

Having said all that, however, I reiterate the central point of my testimony: No consumer should be charged for a product or service that he or she has not actually and knowingly purchased, and the cramming problem has obviously persisted despite industry’s efforts to combat it. On July 12, 2011, the day before the Senate Commerce Committee hearing on this issue, the FCC initiated a rulemaking proceeding that proposes new regulations to protect consumers from the illegal placement of an unauthorized fee or charge onto monthly phone bills. The FCC notice of proposed rulemaking proposes a number of intriguing and potentially promising new approaches to ending or at least minimizing the occurrence of cramming. Once the FCC publishes the text of its proposed rules in the *Federal Register* and announces a formal comment period, we expect that industry members and other interested parties will carefully and thoughtfully review those proposals and provide constructive input for the FCC’s rulemaking process.

Question 2. In your testimony you address levels of protection phone companies commonly use when dealing with new service providers. Even with contractual provisions, bad actors are continuing to find a way through protections. Are there penalties for phone companies or aggregators who cut corners when screening new actors? Though you refer to providing instant credit to a defrauded customer as “common practice,” do most companies actually require this credit?

Answer. Although I cannot speak to the practices of each of the hundreds of local exchange companies (LECs) operating in the United States, the industry’s leading companies do indeed impose penalties on aggregators who fail to properly screen new product or service vendors, as well as on the vendors themselves. As my testimony indicated, these LECs set complaint thresholds applicable to these parties and provide for suspension or termination of billing services if those thresholds are exceeded. Contracts with aggregators often include penalties to be paid by the aggregator for each complaint received. Companies are also looking to other measures to screen new and existing aggregators and providers. For example, AT&T requires aggregators to “actively oversee” the operations of service providers. The

aggregators are then subject to annual audits. Based on the first set of audit reports, AT&T has identified both “best practices” and weaknesses in the operations of the aggregators. When weaknesses are identified, AT&T requires that they be corrected. Over time, AT&T expects the audit process to drive significant improvements in aggregator operations.

It is also the policy of these companies to offer an instant credit to a customer who complains that a charge on his or her bill is not recognized or was not authorized. Although we recognize that among the many thousands of interactions our companies have with their customers on a daily basis the Committee may have uncovered instances in which that credit was not offered immediately, we believe that in the vast majority of cases, such charges are credited back to the customer promptly with no questions asked.

Question 3. Your predecessor stated to Congress in 1998 that consumers must take more responsibility in examining their bills. Deceptive techniques are intentionally used to confuse customers into missing cramming charges. Do you believe it is reasonable to put the burden on the customer to catch vaguely identified charges on their personal phone bills?

Answer. I cannot speak to the intent behind the statement of my predecessor described in your question, but based on my current understanding of this issue, I do not believe he meant to place the entire burden on the customer for identifying or catching vague or otherwise disguised charges on their phone bills. Rather, he seemed to be making the common-sense suggestion that consumers review their phone bills as carefully as they would any bill they receive—whether their monthly water or electric bill, or their grocery bill, or an insurance premium bill—to ensure they understand what they’re being charged for and to challenge any item that appears questionable or suspicious. Indeed, both the FCC and FTC have issued consumer bulletins encouraging consumers to take the same steps. In the FTC’s “Facts for Consumers” and the FCC’s “Consumer Facts” both agencies urge consumers to review their telephone bills for unauthorized charges. This is just good common-sense advice, and no one should consider it as intended to take the place of company steps to provide clear bills and aggressively working to prevent cramming in the first place.

Existing truth-in-billing rules already require that “the description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received and that the costs assessed for those services conform to their understanding of the price charged.” Our members review third parties’ service descriptions before they approve the “text phrases” that appear on their bills, and they attempt to ensure that those text phrases are brief, clear, and non-misleading. It may be that companies need to provide consumers with additional information about third party billing availability and third party bill blocking. The Commerce Committee’s current investigation, as well as the FCC’s Notice of Proposed Rulemaking, has also raised awareness of the issue.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARK PRYOR TO
WALTER B. McCORMICK, JR.

Question. Some of your members have been involved with settlements with Attorneys General over third party billing. To what extent have those agreed to conditions been incorporated into “best practices” for your industry?

Answer. Although I have not done an exhaustive study of the subject, I am aware of only one settlement by a member company of our Association with a State Attorney General. In that case, AT&T was required, in an agreement with the Florida Attorney General, to reduce the incidence of cramming complaints by its customers throughout its Southeast region. AT&T implemented a new and aggressive enforcement program in early 2010 and achieved an 89 percent reduction in consumer cramming complaints in the succeeding 17 months through May 2011, exceeding the requirements of its Florida settlement.

Likewise, while crammers, scammers, and con artists have continued to find new and more sophisticated ways of evading detection, our leading member companies have continued to improve and tighten their own third-party billing practices to guard against consumer complaints. The ways in which those practices have evolved in recent years are spelled out more specifically in my written testimony. The testimony of Illinois Attorney General Madigan and Vermont Assistant Attorney General Burg indicated that the cases they have brought in this area, and the settlements or judgments they have obtained, involve billing aggregators and third-party vendors rather than local exchange companies.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. KELLY AYOTTE TO
WALTER B. MCCORMICK, JR.

Question. Mr. McCormick, as you know, in 1998 the FCC held a workshop on cramming and from that workshop, it developed the "Anti-Cramming Best Practices Guidelines". One of the recommendations in the guidelines is for the Local Exchange Carriers to provide law enforcement with data to help control and combat cramming. Can you expand a little on how your industry has been working with law enforcement and what improvement and changes you would recommend we make to better address cramming?

Answer. I am assured by our large and midsize companies that they cooperate with law enforcement during investigations of cramming fraud and similar violations of law. For example, in response to subpoenas and legal requests, our member companies have in many cases provided billing data and information to assist in investigations by both state and federal agencies. Additionally, several of our members have also been engaged in regular dialogue with law enforcement on cramming issues in general, and they will continue to cooperate with law enforcement as an industry and on a case-by-case basis. Details regarding specific instances of cooperation with law enforcement are highly sensitive, as they could reveal tactics related to ongoing investigations. Accordingly, if you would like a private briefing from any of these companies to learn more about how they deal with law enforcement requests, we would be happy to help facilitate that.

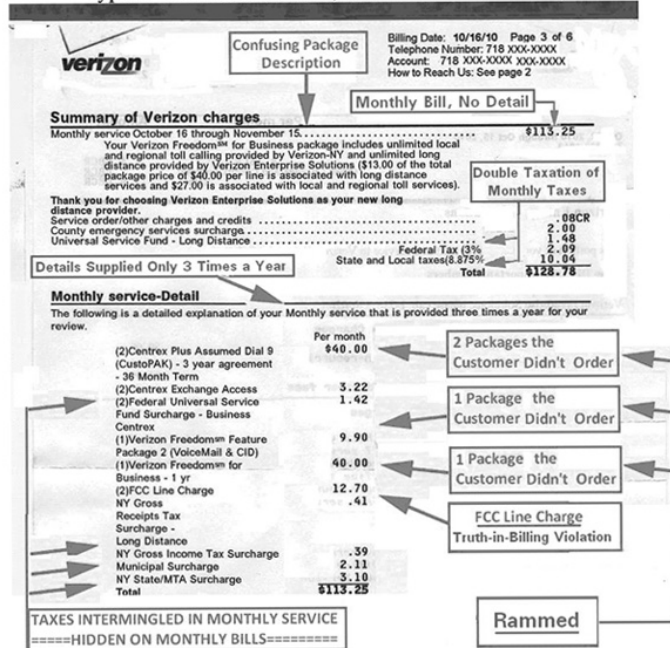
Submitted Statements and Letters

TELETRUTH
July 14, 2011

Cramming and Mysterious Phone Fees

We are glad to see that this Committee is again addressing "cramming," usually defined as "placing unauthorized third-party charges on consumers' telephone bills." However, "*Ramming*" is the major creator of "mysterious phone fees" and overcharging in America, impacting over 80 percent of all small business and residential customers, and costing \$8-\$10 billion in excess wireline-based local and long distance phone charges annually.

Typical "Rammed" Verizon, New York 2 Line Grocer, 2010



“Ramming”—The phone company you already have a relationship with is harming you, by not telling you the “best option” and putting you on the most expensive plan or on a service you can’t even use, need or didn’t even order.

Unfortunately, neither ramming nor cramming is new.

Bill Kennard, former Chairman of the FCC, stated, February 4, 1999 <http://transition.fcc.gov/Speeches/Kennard/spwek904.html>.

“After receiving thousands of complaints about companies cramming all these strange and hard-to-understand charges on bills, we have taken action. We have proposed new guidelines for phone companies on how they can make phone bills simpler and easier to understand. We want to make it so that the statement sent to you each month is as clear and easy to understand as the nutrition label on a box of Wheaties.”

According to the FCC, in 2011, 1 in 20 are impacted by cramming and it is usually a one-time fee, accounting for hundreds of millions of dollars annually.

“Ramming,” however is the larger problem because it can cost a small business \$500.00–\$1,000.00 annually, \$100.00–\$500.00 for residential customers—and it can go on for years.

“Ramming” Example

In the front of our testimony we present a typical Verizon, New York small business grocer’s bill with only 2 lines who has been “rammed,” put on 4 different packages that they do not use and claim in interviews they did not order. The bill shows two “Centrex Plus Assumed Dial 9 (Custopak)” services (which is a package of calling features that is supposed to replace a phone system and has features like “call transfer” and “intercom”). Unfortunately, one line is a data-line, used for an ATM machine that can’t use the features and can’t “intercom” with the other line. This grocer was put on an unlimited plan for local, toll and long distance calling, where they make virtually no local, toll or long distance calls. This customer was overcharged over \$1,000.00 a year.

From school boards and police stations, restaurants and grocery stores, to non-profits or home offices, ramming of services is a fact of life. In our new research we documented various toll and long distance calling packages on phone lines that can’t make calls, phantom-missing lines being charged, calling feature packages where the features can’t be used, or paying for Internet-related services that the customer didn’t order.

There Is No Truth in “Truth-In-Billing”

It is no wonder that 80 percent of customers, both residential and small businesses, are being overcharged through ramming, cramming and slamming.

We will be filing a new complaint to the FCC and FTC outlining over the 138 potential truth-in-billing and truth-in-advertising violations on just 1 Verizon New York small business bill, the affiliated advertising and web information surrounding the customers’ charges, making it impossible to understand basic costs and services.

Using this one Customer’s bills and information supplied we found: (NOTE: The “detailed” phone bill in the front is only sent 3 times a year. Not one customer we interviewed knew there was a more detailed bill.)

- The “Monthly” bill is useless and is hiding under “monthly service” four rammed packages the customer did not need, want, order or can even use.
- Verizon does not give basic information, such as how many lines there are or what is on each line on either the monthly or “tri-annual” bills.
- There is no Rosetta Stone to understand how the myriad of taxes are applied.
- Under “monthly service,” taxes and surcharges are hidden, being double taxed or even triple taxed as in some cases they are made up or pass-through taxes the company should be paying.
- The long distance charges are “made up” as they do not reflect ALL of the long distance fees, taxes, and surcharges added, just two questionable “PICC” fees which were supposed to be removed a decade ago, that is taxed.
- Website: Verizon does not supply even basic, accurate information on what a “basic” POTS, (plain old telephone service), business line costs.
- Website: Verizon’s packages never explain the actual costs of a service on either their website or even in customer presentations, leaving out 20–50 percent of the actual costs, or the costs after the promotion price leaves.
- Verizon, New York still uses the term “FCC Line Charge,” which was considered a violation of TIB because it sounds like the charges goes to fund the FCC, but it is direct revenue back to the Verizon.

These are just a few of hundreds of issues that make phone bills unreadable to the average customer, who just reads the front page total and pays their bills.

“Harvesting” of Customers and the FCC Cover Up through Atrocious Data

Related to ramming is “*Harvesting*,” where AT&T and now even the local phone companies are essentially raising rates continuously until the customer screams uncle and is pushed onto a more expensive package of services or is gouged.

This practice has been focused on gouging low income, low volume users, including Lifeline customers and Seniors.

The FCC has been claiming that they are “data driven” yet, how can the Agency be data driven when they don’t use actual phone bills as the source materials for phone bill charges information, our they fail to collect industry-wide data via actual bill surveys?

In short, the FCC’s data on phone bill charges is atrocious and has covered over massive customer overcharging. We can say this without flinching as we’ve been critical about FCC phone charges data since our first complaint in 1994 and have been filing, in not only about truth-in-billing proceedings, but on cost of service issues, mistakes on bills, and the problems of using industry statistics. (In fact, Teletruth has its own web pages at the FCC in the “Data Quality Act” section of the site.)

Let me be specific. AT&T’s has been “harvesting” customers, which started as a result of the FCC’s decision to close down competition on the phone networks, including stopping then AT&T and MCI’s ability to compete for local service.

Today, AT&T’s basic 1 minute long distance rate if you don’t have a plan (or it expired) is now \$.39 a minute, \$.97 a minute for business. How many customers are paying that? How many customers have “minimum usage” fees, plan fees, made up taxes and make few, if any calls?

Note: International calls without plans are truly gouged: France cost \$3.25 a minute, United Kingdom is \$2.82, Canada is \$1.13, Japan is \$3.76, and the Ukraine is \$5.99 a minute.

In 2004 and 2008 Teletruth, working with UCAN, a consumer group in San Diego, California collected hundreds of actual wireline, wireless, cable, broadband and Internet bills, then did follow interviews. Funded by a grant from the California Consumer Protection Fund, large segments of the population, including Lifeline customers, seniors and customers who ‘just pay their bills,’ were being forced to pay continuously higher fees—customers paying \$.50–\$1.00 a minute for wireline long distance service was common. (*Note:* AT&T grandfathered a host of different plans with different pricing, minimum usage, etc.)

The FCC claims that a 1 minute long distance or wireless call is \$.05, and this is based on industry statistics with no reality to what customers are actually paying.

- Read Our California Phone Bill Survey Report
- <http://www.teletruth.org/docs/UCANteletruth.pdf>
- Read the Phone Bill Related Data Quality Complaints
- <http://www.teletruth.org/docs/DQAphonecharges.doc>
- To Read Our Report on AT&T Harvesting
- <http://www.teletruth.org/docs/Dataqualityactharvesting.doc>

How to Fix the Problem?

Chairman Bill Kennard in 1999 stated that he couldn’t read the phone bill.

“A few months ago, my wife was going over our bills, and she called me over. ‘Honey, can you give me hand with this phone bill. I just don’t understand all these charges.’ I walked over, ready to make good use of hours of reading, countless briefings, and years of practicing communications law. And you know what? I didn’t understand them either. . . . Now, if the Chairman of the FCC can’t understand his phone bill, then there’s a problem.”

He added that phone bills would get “more confusing.”

“In the next few years, these bills have the potential to get even more confusing as more and more of us will be buying more advanced services from a huge array of companies. That is why it is imperative that bills are clear and easy to read. It is imperative that nothing is crammed onto them that you don’t want or don’t understand. You should be able to read your bill and know what you’re paying for.”

What Should Be Done?

Have us testify about ramming and read our books: Teletruth has just released our two volume set, "Survival Guide & Workbook for Residential & Small Business Wireline & Wireless Telecommunications" to help the phone customers examine their bills for potential mistakes and overcharging on their Verizon, AT&T and other phone bills that could lead to refunds or future savings.

- "Secrets of Your Phone Bills: Have You Been Rammed, Slammed Or Crammed By Your Phone Company and are Owed Money?"
- "Teletruth's Step-by-Step, Auditing Your Phone Bills for Refunds & Savings Workbook"

We wrote them because right now \$8-\$10 billion dollars of overcharging has been and will be placed on customers' phone bills during 2011 and neither the FCC nor Congress has a clue about how to fix these problems, or has investigated our claims over the last two decades.

If Congress is serious about this, there are a host of steps it could take immediately to fix the problems of unreadable phone bills and customer overcharging. When we testify we will be glad to outline them or you can read about them in our new publications.

About Teletruth

Teletruth is a nationwide, customer advocacy group created to defend the rights of all customers, residential and businesses alike. Tom Allibone, Teletruth's Director of Auditing is a 40 year telecom veteran having started at AT&T and has been offering forensic phone bill auditing services for decades, recovering millions for customers. Bruce Kushnick, Executive Director of New Networks Institute, has been a visionary telecom analyst for 30 years, working with the industry leaders to deploy new services, such as the first 3 digit information service (like 311), in 1992, to examining and tracking the impacts the progeny of Ma Bell has had on broadband deployment, economic growth and customers' pocketbooks.

Working as a team, Teletruth has helped to create multiple class action suit settlements, acted as "expert witnesses" and was on the FCC Consumer Advisory Committee. Teletruth is not funded by and is not affiliated with any political party or corporation.

Bruce Kushnick,
Chairman, Teletruth.
Executive Director, New Networks Institute.
bruce@teletruth.org
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CONSUMERS UNION
July 13, 2011

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and
Transportation
U.S. Senate
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
U.S. Senate
Washington, DC.

Re: Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose

Dear Chairman Rockefeller and Ranking Member Hutchinson:

Consumers Union, the nonprofit publisher of *Consumer Reports*® magazine, writes to express support of the Committee on Commerce, Science, and Transportation's upcoming hearing on unauthorized telephone billing or "cramming."

Cramming presents a significant threat to consumers. *Consumer Reports*® reported on the experience of John Arwe, a computer programmer who found a \$15 charge on his Verizon bill for voice mail and, again, a pair of \$8 charges for voice mail. He never authorized either and spent over twenty hours getting the charges from the third party billers and aggregators removed.

The Federal Communications Commission has indicated also that roughly 20 million Americans are victimized annually by unscrupulous companies which illegally insert consumer bills with these unauthorized, cryptic charges. So duplicitous are the methods used by the third party billers and aggregators who engage in cramming that only around 5 percent of those consumers are even aware they are being defrauded.

It is evident that cramming is a wide-spread threat to consumers. Effective regulation of cramming is vital in order to protect consumers from unauthorized charges. We look forward to working with Congress to address the unfair and misleading practices employed by companies that profit from the practice of cramming.

Respectfully Submitted,

PARUL P. DESAI,
Policy Counsel,
Consumers Union.

NATIONAL CONSUMERS LEAGUE
July 13, 2011

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, DC.

Dear Chairman Rockefeller:

The National Consumers League¹ (NCL) would like to take this opportunity to thank you for convening today's hearing on stopping *cramming,* the placement of unauthorized charges on consumers* monthly phone bills. For too long, cramming has bedeviled American telecommunications consumers. You and the members of the Commerce Committee are to be applauded for your leadership in bringing attention to this important issue.

For more than a decade, NCL has sought to raise consumer awareness about cramming. Despite vigorous consumer education efforts by governmental agencies and non-profit groups, cramming continues to be a lucrative crime. The FCC estimates that 15 to 20 million American households receive crammed charges on their wireline phone bills each year.² Voluntary efforts by the telecommunications industry and billing aggregators to address the issue have been largely unsuccessful. We believe that now is the time to take concrete steps to rein in cramming scams by prohibiting, with few exceptions, third-party billing on wireline phone bills and by giving regulators better tools to crack down on crammers.

Cramming is a Significant Crime with Real Victims

Cramming is a significant problem for consumers for a number of reasons. First, identifying mistakes in a phone bill requires careful perusal of multi-page phone bills to identify suspicious charges. Even when reviewing a printed monthly phone bill, a small charge of \$2.99 can get lost among regulatory fees, taxes and other legitimate line items. Descriptions of the services also act to confuse consumers, with some examples including, "voice online, dial forward, dial flex, plan plus, network one, call advantage, custom call, and value plan."³ Today, with telephone bills increasingly paid electronically via "paperless" initiatives, the chances of a consumer catching erroneous charges are smaller than ever. It is therefore unrealistic to expect consumers to go line by line through their phone bills on a regular basis. Crammers are well aware of this tendency and in fact depend on it. According to a Federal Trade Commission (FTC) survey, only one in twenty victims of cramming were aware that they were being defrauded.⁴

Even when a consumer does identify a suspicious charge, it is often difficult to resolve the situation. For example, Joe Ticich, a consumer in West Virginia, recently noticed an erroneous charge of \$15.22 from a company called Main Street Telephone on his Verizon home telephone bill. The charge reappeared on his phone bill even after both Verizon and Main Street Telephone assured Ticich that the charge had

¹The National Consumers League, founded in 1899, is America's pioneer consumer organization. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit www.nclnet.org.

²"Cramming: The practice of placing charges on your telephone bill for unauthorized products or services," Federal Communications Commission fact sheet. Online: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0620/DOC-307726A1.pdf.

³Comments of Beth Blackston, FTC workshop on cramming, May 11, 2011. Pg. 27. Online: <http://www.ftc.gov/bcp/workshops/cramming/10511phoneworkshop.pdf>.

⁴FTC v. INC21.com Corp., (N.D. CA 2010).

been rectified.⁵ Main Street Telephone was later ordered to return more than \$4.2 million in fraudulent payments.⁶ Mr. Ticich is not alone. A recent Federal Communications Commission investigation noted a woman from Missouri who filed a complaint after she learned she had paid unauthorized charges unnoticed for 25 months.⁷

Second, the crammers themselves have perfected methods for gaming the system to keep their fraud undetected. Last year, a Federal Trade Commission investigation uncovered a scheme 5 years running, where two San Francisco brothers, Roy and John Lin, made over \$37 million through cramming charges. The brothers employed telemarketers to call consumers and “verify” their addresses, only to use recordings of the phone calls as “proof” of authorization for later charges. The FTC even found that only 5 percent of those billed in this case knew about the charges.⁸

Cramming is a problem that affects businesses as well as individual consumers. Beth Blackston, an Assistant Attorney General for the State of Illinois, recently described one example where 9,842 phone company customers had received charges on their phone bills for credit repair services, typically considered a service for individuals, not businesses. Victims included a Steak ‘n Shake restaurant, a county coroner’s office, a Super 8 lodge, and the story line of the local public library.⁹

Despite industry efforts to reign in cramming, third-party billing remains an avenue to consumers’ pocketbooks that is rife with fraud. Except in a very few circumstances, we believe that there is little reason why a consumer would want to be billed by a legitimate third-party service provider on their wireline telephone bill. Indeed, a FCC investigation found that only 20 out of 17,384 consumers actually used the third-party service for which they were billed. The same investigation found that just 22 of the 18,571 consumers charged for dial-around long distance actually used the service, a usage rate in both cases of roughly 0.1 percent.

State Anti-Cramming Efforts Are a Template for Federal Protections

Across the country, twenty-five states have implemented legislation related to cramming. These laws vary greatly in scope, from difficult-to-enforce general prohibitions to more comprehensive laws that effectively end fraudulent third-party billing.

We urge the Committee to consider the unique approach taken by the state of Vermont where new anti-cramming legislation uniquely positions that state to end this scam for good. The Vermont law generally prohibits third-party billing, unless the third party (1) is subject to the jurisdiction of the Vermont Public Service Board including phone companies that market television and Internet services, (2) is a direct dial service or dial-around service initiated from an individual’s telephone, or (3) is an operator assisted call, collect call, or service for inmates making calls.

For some time, opponents of anti-cramming legislation have pointed to legitimate third-party services that should be allowed. Some third-party service providers, billing aggregators and telecommunications carriers have taken steps to make fraud less likely. Still the FCC’s finding that virtually no consumers used the third-party services for which they were billed coupled with so many examples of abuse over the last decade, suggest that any solution other than that enacted in Vermont is insufficient to address the problem.

In light of the potential for continued cramming abuses, we urge that FCC and FTC oversight over third-party billing be strengthened. In this area, we recommend that the Committee consider the new rules adopted by the California Public Utilities Commission (CPUC) last year. Under these new rules, the CPUC requires billing aggregators to submit quarterly reports that indicate (1) refunds they made to their customers in response to cramming complaints, and (2) third-party services they suspended or terminated from access to third-party billing. The new rules also require explicit permission from customers before allowing third-party charges and re-

⁵Susanna Kim, “How to spot and prevent unauthorized phone bills,” ABC News, June 21, 2011. <http://abcnews.go.com/Business/95-percent-victims-detect-unauthorized-charges/story?id=13892850>.

⁶FCC press release, “FCC chairman Genachowski unveils new actions to help consumers prevent & identify mystery fees* on phone bills, known as ‘cramming,’” June 20, 2011. Online: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0620/DOC-307732A1.pdf.

⁷FCC press release, “Cramming & Consumers: How the FCC is fighting unauthorized ‘mystery fees’ on phone bills,” June 20, 2011. Online: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0620/DOC307728A1.pdf.

⁸“Court Permanently Shuts Down Massive Cramming Operation,” Federal Trade Commission press release, Sept. 30, 2010. Online: <http://www.ftc.gov/opa/2010/03/inc21.shtm>.

⁹Comments of Beth Blackston, FTC workshop on cramming, May 11, 2011. Pg. 27. Online: <http://www.ftc.gov/bcp/workshops/cramming/10511phoneworkshop.pdf>.

quire billing aggregators to provide consumers with a no-cost option to block or limit third-party offerings.¹⁰

While these rules do not immediately prevent cramming and continue to put the onus on consumers to study their monthly phone bills carefully, these reporting requirements are critical both for determining the efficacy of anti-cramming measures and for indicating to consumers those third-party billers they should avoid due to known violations. Strong oversight and reporting are thus critical components to any future anti-cramming legislation.

Solutions To Cramming Are Within Reach

Consumers should never be billed for services they do not want or did not request. For over a decade, consumer groups have called on telecommunications carriers to notify customers in advance of billing for services, to clearly describe services on phone bills, and to provide customer service that is focused on clearing erroneous charges. Despite these efforts, cramming remains a fraud that regularly affects millions of Americans.

The evidence of a significant cramming problem is clear. We call on the committee to take a tough stand against crammers, to recognize that third-party billing is generally not consumer-friendly, and that the FCC, FTC and consumers need more tools to address the problem. With Vermont's new law and the CPUC's cramming regulations as a template, a workable solution that protects consumers is within reach.

Thank you for your attention to this issue. We look forward to answering any questions you or your colleagues on the Senate Commerce Committee may have.

Sincerely,

SALLY GREENBERG,
Executive Director.

cc: The Honorable Kay Bailey Hutchison, Ranking Member

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
July 12, 2011

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and
Transportation,
Washington, DC.

Hon. KAY BAILEY HUTCHISON,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
Washington, DC.

Re: Senate Commerce Committee Hearing on Unauthorized Charges on Telephone
Bills: Why Crammers Win and Consumers Lose—July 13, 2011

Dear Chairman Rockefeller and Ranking Member Hutchison:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), we are writing to commend your investigation into and hearing on cramming issues. This issue continues to affect consumers despite unprecedented technological advancements in the telecommunications space marketplace and focused Federal and State enforcement activity.

NARUC represents the government experts from each of your States, U.S. Territories, and the District of Columbia on, among other things, telecommunications utilities. These public utility commissions know and understand local markets and conditions. They excel at responsive consumer protection, handling new abuses, and enforcing federal standards where appropriate. NARUC members share your concern with fraudulent or deceptive billing practices that harm consumers.

As early as 2002, NARUC adopted a resolution concerning *Telecommunications Consumer Bill of Rights* (text attached). The resolution, among other things, affirmed “consumers should have a right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions agreed to” and called for consumers to have “fair, prompt and courteous redress for problems they encounter.”

NARUC members receive and resolve thousands of cramming complaints every year returning hundreds of thousands of dollars to consumers as a result of their actions. Cramming is a prime example of States working hand in glove with their federal partners at the Federal Communications Commission (FCC) and Federal

¹⁰“CPUC Strengthens Consumer Protections Against Cramming and Fraud on Telephone Bills.” California Public Utilities Commission press release, October 28, 2010. Online: http://docs.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/125716.htm.

Trade Commission (FTC). Indeed, a December 2009 GAO report (<http://www.gao.gov/new.items/d1034.pdf>) on wireless oversight by the FCC touted the obvious benefits of coordinated federal and state action. Consumers only benefit from a continuation of that collaborative enforcement partnership.

Despite these efforts, it is clear that cramming remains a problem. This demonstrates how “bad actor” problems cannot be handled by market forces alone and how changes in technology don’t necessarily change or resolve consumer concerns.

We appreciate your leadership on this important issue. NARUC stands willing to work with Congress, the FCC, FTC and other stakeholders to address this and other consumer concerns.

If you have questions about NARUC’s positions or would like to discuss it further, please contact NARUC Legislative Director Brian O’Hara at (202)898–2205, bohara@naruc.org or NARUC General Counsel Brad Ramsay at (202)898–2207, jramsay@naruc.org.

Sincerely,

Tony Clark, President, NARUC

John Burke, Chair, Committee on Telecommunications

cc: Members of the Commerce, Science, and Transportation Committee

Resolution on Telecommunications Consumer Bill of Rights

WHEREAS, The past decade has been witness to a rapid evolution in the telecommunications industry, not only in the technology the industry employs, but also in the industry’s structure, the mix of services provided, and the way services are provided to consumers; and

WHEREAS, Many of what were once monopoly services are increasingly available from competing providers, and regulatory policies have likewise been evolving in ways aimed at enabling and promoting competition to foster the benefits competition has promised to provide; and

WHEREAS, It was once envisioned that competition would result in lower levels of consumer abuse and fraud, but the contrary has proven true; and

WHEREAS, Consumers are now exposed to unprecedented levels of consumer abuse and fraud in many segments of the market, including segments that previously experienced only occasional examples of such problems; and

WHEREAS, With the emergence of competition and the deployment of new telecommunications technologies, general consumer protection rules that were developed under monopoly conditions may in some respects be no longer adequate to protect small consumers. Consumers require protection against abusive practices in the marketing and provisioning of both old and new types of telecommunication services; and

WHEREAS, Such changes in the telecommunications industry suggest that it would be timely for regulatory bodies to review the general rules protecting consumers and determine whether new rules using a new format should be developed; and

WHEREAS, A Consumer Bill of Rights can be a useful vehicle to educate consumers and guide the revision of existing consumer protection rules and/or establish new rules applicable to all regulated telecommunications carriers that provide service to residential and small business consumers; and

WHEREAS, Fundamental rights of consumers should include rights to disclosure, choice, privacy, participation in public policy proceedings, enforcement, accurate bills, freedom from discrimination, and safety; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its July 2002 Summer Meetings in Portland, Oregon, urges that a Consumer Bill of Rights for consumers of telecommunications services be developed for the protection of all residential and small business telecommunications consumers, regardless of their provider of such services, and should include the following:

1. Disclosure: Consumers should have a right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions they have agreed to, and that reasonable notice is given prior to an increase in rates or more restrictive terms or conditions; and
2. Choice: Consumers should have a right to select their services and vendors, and to have those choices respected by industry; and

3. Privacy: Consumers should have a right to personal privacy, to have protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology; and

4. Public Participation Enforcement: Consumers should have a right to participate in public policy proceedings, to be informed of their rights and what agencies enforce those rights, and to have effective recourse if their rights are violated; and

5. Accurate Bills and Redress: Consumers should have a right to accurate and understandable bills for products and services they authorize, and to fair, prompt and courteous redress for problems they encounter; and

6. Non-Discrimination: Every consumer should have the right to be treated equally to all other similarly situated consumers, free of prejudice or disadvantage; and

7. Safety: Consumers should have a right to safety and security of their persons and property; and be it further

RESOLVED, That NARUC urges both the Federal Communications Commission and individual state commissions to consider adoption of comprehensive and effective rules to implement these rights which do not preempt the ability of the states to promulgate more stringent rules than the FCC, while taking into account the specific parameters of each state commission's telecommunications jurisdiction.

Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors July 31, 2002

