



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 rulemaking 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 five 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 voicemail 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, voicemail, 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 voicemail" 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 included \$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.

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

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

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

³ Permanent 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).

⁴ *Section 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 Rcd. 16440 (2007) (*Section 272 Sunset Order*).

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

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, 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 nonbinding 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

⁶ 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) (italics in original).

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

⁸ 1998 Senate Cramming Hearing, *supra*, note 3.

⁹ Federal 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.*

¹¹ See 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).

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-misleading 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:

¹² 1998 Senate Cramming Hearing, *supra*, note 3.

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

¹⁴ *Id.*

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).

- In 2006, the Attorney General of Florida filed a lawsuit against Email 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 US 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% 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

¹⁷ Settlement Agreement, *State of Florida, Office of the Attorney General v. Email 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 US 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).

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 General 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.

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).

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, Tangoe, 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 communications 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.

²⁸ *Id.*

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

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, voicemail, 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

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

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

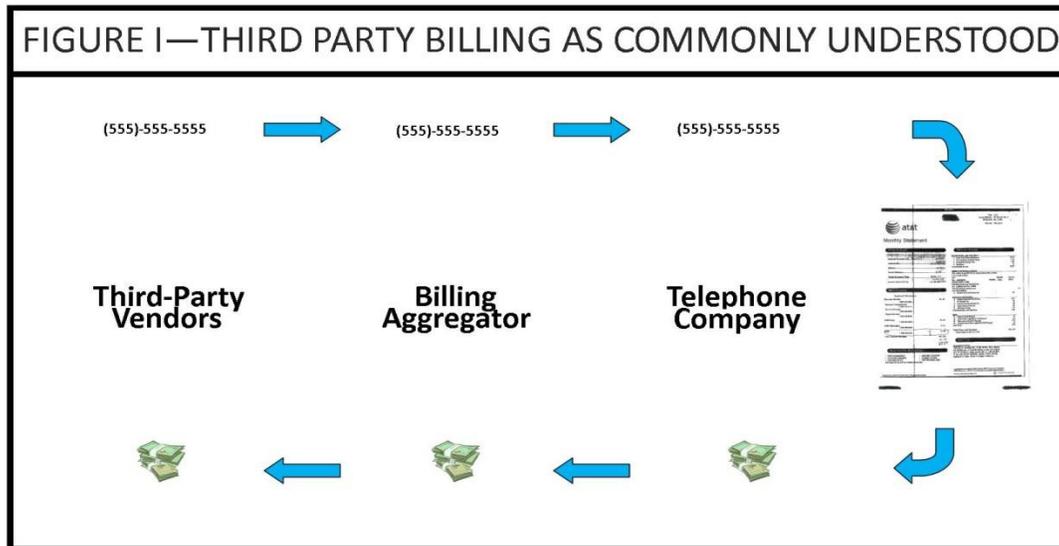
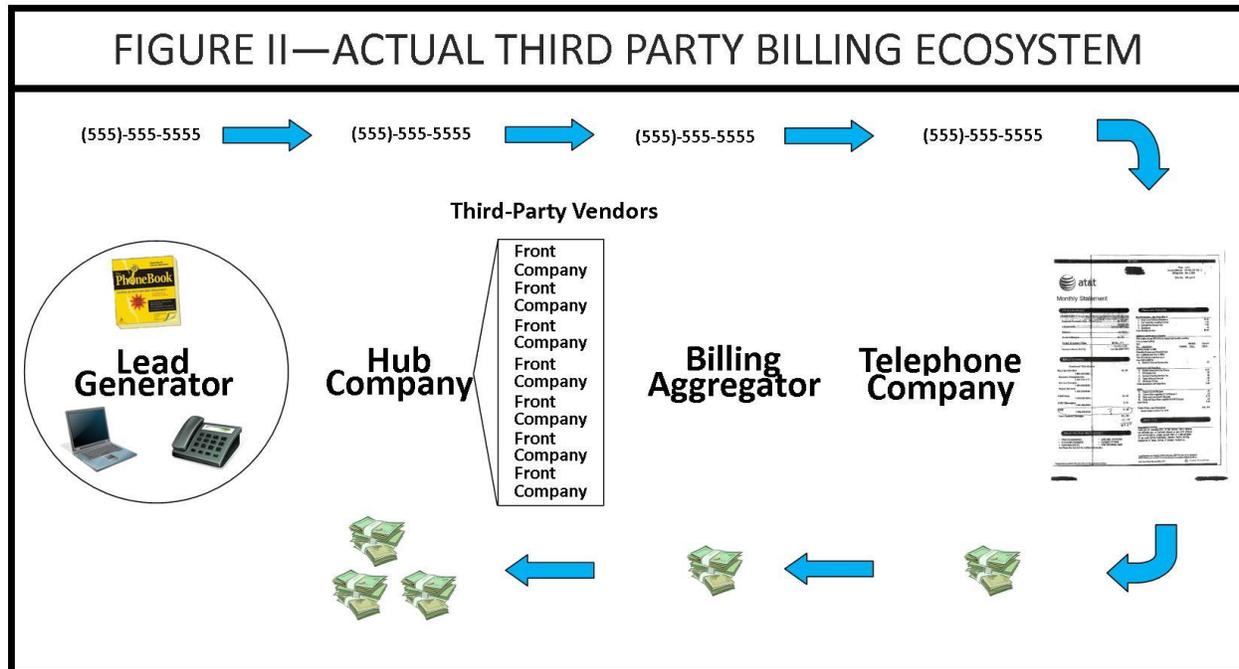


Figure I illustrates the third-party charge process as it is usually described by the involved parties. The third-party vendor allegedly sells a consumer a service and obtains the consumer's "authorization" to bill his or her telephone number. The vendor passes the number to a billing aggregator, which 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

³¹ A 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 complaints 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).

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.



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

³² The 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 two years.

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

³⁴ Verizon 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.

third-party billing. In 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 nonexistent 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.

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).

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 nine 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

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:

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).

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).

- 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 voicemail;
- 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 voicemail;
- 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% 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 on-line.”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 marketed to “casting agents”

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).

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 email 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 line 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:

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

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

⁵⁰ *Id.*

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

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...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 "okay" 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

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

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

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

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

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

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).

⁵⁷ Federal 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).

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

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.

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

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).

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 voicemail 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 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

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).

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).

- **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 cut off].”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 five years. Their clients were nonprofits, municipal

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.

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

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

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 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 five years.

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 cancelling 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.

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.

⁸⁰ As 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.

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 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

⁸¹ This 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.

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 offered.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,

⁸² These third-party vendors were: My Info Guard, LLC; New Link Network, LLC; NS Voicemail, LLC; Total I Protect, LLC; Total Protection Plus, LLC; USA Voicemail, 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.*

⁸⁵ Committee 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.

⁸⁶ Letter 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.

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

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

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; LowCostBilling; MyTeleServices; and MyBillingGuys.

⁹¹ *The Hagglers: 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/myserviceandsupport-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).

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 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 “voicemail 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

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; Voicemail 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.

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

¹⁰¹ *Id.*

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

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

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

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.

telephone companies. She receives a monthly check worth a few hundred dollars for serving as “president” of the company.¹⁰⁶

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.

“Voicemail” Services MySnS’s third-party vendors each charged telephone customers for “voicemail” 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 “voicemail” 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% of the telephone customers charged for “voicemail” 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% 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

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 voicemail 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).



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 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 cancelling 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 eight 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

¹¹² MORE 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).

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

¹¹⁴ *Id.*

¹¹⁵ daData Produced Document (daData Doc. DAT366822).

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 1700 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 voicemail 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, 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

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

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).

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 voicemail 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,

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."

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 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.

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

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).

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—ie 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. ...

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

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).

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% 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 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

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).

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).

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

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

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 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 eight 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

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

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.*

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.

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 emails 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

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).

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."



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

¹⁵¹ *Id.*

¹⁵² *Id.*

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 that the company again made some progress combatting unauthorized charges, only to have the problem “resurge” again a few years later.

 ***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 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.

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

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

- An employee noted in July 2009 that, “although third-party billing complaints were down for the month (-17%), 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 ie customer complaints re fraud, being billed for things they didn’t do, which often escalate to Ivan’s desk, PUC Complaints or lawsuits.”¹⁶⁴

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).

- 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, 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:

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.*

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.

- 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:

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).

- 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 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

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

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

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).

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.

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