U.S. Senate Commerce Committee
Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose
Written Testimony of Illinois Attorney General Lisa Madigan

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

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

Background on Telephone Bill Cramming Consumer Complaints

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

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

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

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

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

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

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

Mechanics of Third Party Billing

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

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

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

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

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

Products Billed on Landline Telephone Bills

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

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

Marketing Methods

Telemarketing and Third Party Verification

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

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

- They are only agreeing to a free trial or to receive written materials about an offer, and that if they want to buy something, they must take some affirmative steps to make the purchase. In fact, however, if the consumers agree to the free trial or to receive materials, they are billed, even though they take no further steps; and

- The purpose of the call is to renew a small business consumer's current yellow pages listing, when in fact the vendor has no current business relationship with the small business consumer. This misrepresentation sometimes is coupled with a misrepresentation that the listing is free, and that the caller just needs to verify the business' information to include in the listing.

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

The fundamental problem with these verification tapes is that the recorded conversation takes place *after* the initial telemarketing call, which is unrecorded. Thus, at the point of the supposed verification, the consumer has already heard a deceptive telemarketing sales pitch and, as a result of the deception, has agreed to the free trial or to receive materials, or otherwise is under the impression that he has not made a purchasing decision. The telemarketer often describes the verification process as a mere formality and instructs the consumer to answer yes to the questions posed.

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

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

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

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

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

Letters of Agency and Live Check Solicitations

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

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

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

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

Online 'Solicitations'

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

However, we believe the sign-up forms typically provided to us as so-called proof of authorization are not the actual forms that consumers complete to authorize the purchase. Instead, the simple sign-up form we receive appears to have been populated with information obtained from an online sign-up process known as "co-registration." In this process, a consumer believes he is registering to receive something for free, such as coupons, or to win a prize, such as a television or DVD player. But in fact, by providing the requested personal information, the consumer is also "agreeing" – unwittingly – to purchase a service to be billed on his telephone bill.

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

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

Deceptive Online Marketing and Fraud

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

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

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

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

Past Approaches to Reducing Telephone Bill Cramming

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

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

Ban Third Party Telephone Billing

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

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