

**TESTIMONY OF TRAVIS LEBLANC  
ACTING CHIEF  
ENFORCEMENT BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

**“CRAMMING ON WIRELESS PHONE BILLS: A REVIEW OF CONSUMER PROTECTION AND GAPS”**

**BEFORE THE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
UNITED STATES SENATE**

**JULY 30, 2014**

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, I am Travis LeBlanc, Acting Chief of the Enforcement Bureau at the Federal Communications Commission. Thank you for the opportunity to appear before you to highlight the FCC’s efforts to combat the harmful practice of placing unexpected or unauthorized charges on consumers’ telephone bills, a practice known as cramming.

The Cramming Problem

Cramming is a significant problem, and one that, by its nature, has caused countless consumers to unwittingly open their wallets for products and services they never wanted. A report released in 2011 by Chairman Rockefeller after a year-long investigation of cramming on landline telephone bills showed that telephone companies placed approximately \$2 billion worth of third-party charges on their subscribers’ bills each year, and that most of these charges were unauthorized.<sup>1</sup> Fifteen to twenty million U.S. households are estimated to have

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<sup>1</sup> *Unauthorized Charges on Telephone Bills*, U.S. Senate Committee on Commerce, Science & Transportation, Office of Oversight & Investigations, Majority Staff, Staff Report for Chairman Rockefeller (rel. July 12, 2011), available at [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=3295866e-d4ba-4297-bd26-571665f40756](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=3295866e-d4ba-4297-bd26-571665f40756).

been victims of cramming on their landline telephone bills,<sup>2</sup> and most do not even know it. Historically, many consumers have been completely unaware that their carriers are permitted to charge them for third-party products and services, and do not know to look for third-party charges on their telephone bills. Even those who are aware of the possibility often fail to spot unauthorized charges on their bills, because the charges have been hidden from scrutiny: they have been buried in multi-page bills, not clearly described, or small enough in amount to go unnoticed.<sup>3</sup> Consumer deception is a hallmark of cramming. The Commission took action in 2012 to help wireline consumers detect – or simply avoid – cramming, but unfortunately consumers continue to be crammed.

Today’s hearing is about the fact that cramming is not just a problem for those with landline telephones. Since 2010, the FCC has received more than 5,000 complaints about cramming, and the proportion of those about unauthorized charges on wireless bills has grown from about 15% in 2008-2010 to 58% in 2013. Because so many consumers do not even realize that they have been crammed, or lack the time or knowledge to complain to the FCC, these numbers represent just the tip of the iceberg. A 2012 analysis by the Illinois Citizens Utility Board found that the percentage of fraudulent third-party charges on Illinois consumers’ wireless bills skyrocketed in just one year, from about 26% to 51%.<sup>4</sup> It is critical that cramming on wireless bills not be overlooked, especially now, when Americans are becoming increasingly reliant on their mobile phones. The Pew Research Center estimates that 90% of American

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<sup>2</sup> *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437 (2012) (“*FCC Cramming Order*”).

<sup>3</sup> *Id.* at 4444.

<sup>4</sup> Citizens Utility Board, *Analysis: Frequency of Cellphone “Cramming” Scam Doubles in Illinois, CUB Concerned Wireless Customers Targeted as Landline Law Tighten* (Dec. 4, 2012), available at [http://www.citizensutilityboard/pdfs/NewsReleases/20121204\\_CellPhoneCramming.pdf](http://www.citizensutilityboard/pdfs/NewsReleases/20121204_CellPhoneCramming.pdf).

adults have a cell phone, including 74% of Americans 65 and over.<sup>5</sup> According to the Centers for Disease Control and Prevention, two in five U.S. households have “cut the cord” entirely from their landline phones and are using only mobile phones.<sup>6</sup>

Crammers are predators. They evolve with consumers. As consumers migrate to wireless phones and away from landlines, we expect that the same kind of predators that profited from unauthorized landline charges will look to wireless bills for new and creative ways to defraud consumers. Today, a majority of Americans (58%) have a smartphone.<sup>7</sup> The rise in wireless phone dependence introduces new ways for bad actors to profit from sneaky billing practices. This is because modern smartphones are not just phones that facilitate only voice communications, but sophisticated handheld computers that enable consumers to engage in a wide array of activities, from interactive gaming, to buying a coffee in a café, to shopping online from wherever they are. Consumers with Android phones, for example, can charge all of their app purchases to their phone bills, a form of direct-carrier billing.<sup>8</sup> The more consumers’ mobile phone bills become like credit card bills – reflecting a host of different purchases – the more difficult it may become to spot unauthorized charges.

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<sup>5</sup> Pew Research Internet Project, *Cell Phone and Smartphone Ownership Demographics*, available at <http://www.pewinternet.org/data-trend/mobile/cell-phone-and-smartphone-ownership-demographics/>.

<sup>6</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2013*, (July 2014), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>.

<sup>7</sup> Pew Research Internet Project, *Cell Phone and Smartphone Ownership Demographics*, available at <http://www.pewinternet.org/data-trend/mobile/cell-phone-and-smartphone-ownership-demographics/>.

<sup>8</sup> See, e.g., Ingrid Lunden, “Amazon’s Carrier Billing Deal With Bango To Kick In This Year – Changes For The Appstore And Amazon Ahead?,” TechCrunch, Mar. 20, 2013, available at <http://techcrunch.com/2013/03/20/amazons-carrier-billing-deal-with-bango-to-kick-in-this-year-changes-for-the-appstore-and-amazon-ahead/>; Kevin Parrish, “Google Play Offers Option to Charge Purchases to Your Bill,” Tom’s Guide, May 3, 2012, available at <http://www.tomsguide.com/us/Google-Play-Carrier-Billing-AT-T-Android-Sprint,news-15070.html>.

If there is any good news, it is that in 2012, major landline carriers announced that they would discontinue most third-party billing,<sup>9</sup> and in 2013, major wireless carriers followed suit,<sup>10</sup> at least with respect to third-party billing via premium short messaging services, or PSMS. Perhaps as a result of these agreements and increased government scrutiny, cramming complaints are trending downward. Of course, to the extent that the practice of cramming decreases due to private sector commitments, that is commendable. Unfortunately, that has not proven to be a silver bullet to the heart of cramming; we have not seen the practice of cramming cease entirely. Therefore, strong enforcement is still needed and perhaps additional regulation as well. Protecting consumers is the common goal that we all share, and the FCC stands ready to use the full spectrum of its authority to thwart bad actors and prevent consumers from being defrauded.

#### The FCC's Role in Combatting Cramming

As the federal agency with primary oversight of the nation's telephone carriers, the FCC approaches the problem of cramming through a combination of enforcement, regulation, and consumer education. On the enforcement side, the Commission has taken fourteen enforcement actions since 2010 for placing unauthorized charges on consumers' phone bills. Collectively, these actions are valued at no less than \$122,750,000, including monetary forfeitures the Commission has sought to impose, payments the FCC has ordered enforcement

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<sup>9</sup> Press Release, U.S. Senate Committee on Commerce, Science, & Transportation, *Another Major Phone Company Agrees to End Third-Party Billing on Consumer Phone Bills* (Mar. 28, 2012), available at [http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=0245033e-6fe4-420d-8ed3-cdb39ed6537f](http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=0245033e-6fe4-420d-8ed3-cdb39ed6537f).

<sup>10</sup> Press Release, Office of the Vermont Attorney General, *AT&T Mobility, Sprint, and T-Mobile Will Stop Billing Problematic Third-Party Charges* (Nov. 21, 2013), available at <http://www.atg.state.vt.us/news/att-mobility-sprint-and-t-mobile-will-stop-billing-problematic-third-party-charges.php>.

targets to make to the U.S. Treasury in connection with settlements, and refunds the FCC has ordered the targets to make to injured consumers. Just in the last two weeks, the FCC has taken three of these enforcement actions, which proposed over \$10.5 million in penalties and payments to the U.S. Treasury.

On the regulatory side, the FCC has adopted “truth-in-billing” rules designed to help consumers detect cramming or other unauthorized activities associated with their phone service, and is considering expansion of the rules. It is expected that the Commission will consider any rule changes within the next several months. We also anticipate that the Commission will conduct a workshop or similar event in light of continually evolving third-party billing technologies and practices. And on the education side, the FCC has been engaging consumers through written and video guides, tip sheets, and other materials aimed at empowering them to identify and report cramming.

The FCC’s power to address cramming comes from its statutory authority over carriers. The Communications Act of 1934 is the FCC’s enabling statute, and Section 201(b) is one of its cornerstones. That section declares unlawful all “unjust and unreasonable” charges and practices “for and in connection with” an “interstate or foreign or communication service by wire or radio.”<sup>11</sup> Over fifteen years ago, the FCC found that cramming constituted an unjust and unreasonable practice.<sup>12</sup> Section 201(b), as well as Section 258, the anti-slammings provision of the Act, are the sources of authority for its truth-in-billing rules.

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<sup>11</sup> 47 U.S.C. § 201(b).

<sup>12</sup> *Long Distance Direct Direct, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314 (1998).

## Enforcement

Under the Communications Act, the FCC has a variety of enforcement tools available to achieve compliance. Most often, the FCC initiates a forfeiture proceeding for violations of the Communications Act, including Section 201(b). Generally speaking, the first step in the process is for the FCC to issue a notice of apparent liability for forfeiture, or NAL. The Communications Act authorizes the FCC to impose a penalty of up to \$160,000 for each violation, or each day of a continuing violation, up to a maximum of \$1,575,000 for a continuing violation. Typically, the FCC proposes a forfeiture of \$40,000 for each apparent cramming violation, although in recent cases it has substantially increased that amount for egregious violations. The Enforcement Bureau is generally open to settling a matter in lieu of initiating a forfeiture proceeding. As a condition of settlement, the FCC may require a carrier to reimburse consumers who were injured by its unlawful practices.

The FCC's cramming enforcement actions have arisen from three basic kinds of bad conduct. The first is what I will call "billing carrier cramming," and involves a carrier, either landline or wireless, billing its own subscriber for a third-party product or service. In connection with mobile service in the United States, this has most often involved the carrier charging its subscribers, via PSMS, around \$10 per month for services such as flirting tips, horoscopes, lottery results, and stock quotes. This is the alleged fraudulent activity at issue in the FCC's recently-announced investigation of T-Mobile, and the Federal Trade Commission's complaint in federal district court against the carrier.<sup>13</sup> The FCC and the Federal Trade Commission

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<sup>13</sup> Press Release, Federal Communications Commission, *FCC Investigates Cramming Complaints Against T-Mobile*, (rel. July 1, 2014), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0701/DOC-327998A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0701/DOC-327998A1.pdf).

worked collaboratively on this investigation in order to harmonize our respective enforcement as well as to leverage our respective expertise. T-Mobile allegedly crammed hundreds of millions of dollars of PSMS charges onto its subscribers' phone bills from third parties whom the carrier knew, or should have known, did not have authorization to bill its subscribers. Indeed, some of the third parties had refund rates, or "charge-backs," of 40%, and some had been sued for fraud. We are pleased with our collaboration with the Federal Trade Commission on the T-Mobile investigation and look forward to continuing to partner with the Federal Trade Commission in the future.

The second type of FCC cramming enforcement action is what I will call "third-party carrier cramming." It involves a fraudulent carrier placing an unauthorized charge for its own product or service on a consumer's phone bill issued by another carrier, typically the consumer's local phone bill. Fraudulent conduct of this type was at issue, in four NALs the Commission released in 2011, which collectively proposed forfeitures of nearly \$12 million.<sup>14</sup> These third-party carriers assessed charges for their own "dial-around" long-distance service of around \$10-15 per month on consumers' local phone bills. Each of the third-party carriers assessed its charges on at least tens of thousands – if not hundreds of thousands – of bills for the service in the year preceding the enforcement action. When the FCC investigated how many consumers the carriers had actually provided service to during that time, incredibly, two of the carriers disclosed that they had serviced only about 20 to 25 consumers, and the other two carriers could or would not answer the question. Further, earlier this month, the FCC

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<sup>14</sup> *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (2011) (\$3,000,000); *Main Street Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (2011) (\$4,200,000); *Norristown Telephone Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (2011) (\$1,500,000); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (2011) (\$3,000,000).

settled with another carrier, Assist 123, LLC, for allegedly placing unauthorized PSMS charges for subscription services like directory assistance, movie listings, driving directions, and lottery results, on consumers' landline and wireless phone bills. The settlement requires Assist 123 to pay \$1.3 million to the U.S. Treasury.<sup>15</sup>

Another flavor of "third-party carrier cramming" is often connected with "slamming" – the unauthorized switch of a consumer's preferred carrier. In the last fourteen months, the FCC has issued five NALs against carriers for apparently switching or attempting to switch consumers' long-distance service through deceit and trickery, and then charging the consumers for a new carrier's service they did not authorize or want. Collectively, the NALs proposed forfeitures of nearly \$28 million.<sup>16</sup> According to the NALs, the *modus operandi* for most of these third-party carriers involved their agents cold-calling consumers, pretending to be affiliated with a consumer's existing provider, offering improved or upgraded service, recording the consumer supposedly authorizing such improved or upgraded service with the existing provider, and then using that "authorization" to switch, or attempt to switch, the consumer's existing long-distance service to the third-party carrier. In several of these cases, the FCC found the conduct so egregious that it proposed additional penalties beyond doubling or tripling the "base" forfeiture of \$40,000 for cramming. Indeed, in one enforcement action that the FCC took this month, the agency found that the carrier, Optic Internet Protocol, Inc., apparently not

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<sup>15</sup> *Assist 123, LLC*, Order, 2014 WL 3512917 (Enf. Bur. 2014).

<sup>16</sup> *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 2014 WL 3427582 (rel. July 14, 2014) (\$7,620,000); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 2014 WL 1778549 (rel. May 5, 2014) (\$3,960,000); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014) (\$5,230,000); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843 (2013) (\$7,600,000); *Consumer Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (\$3,560,000).

only may have tricked consumers to obtain purported authorization, but also fabricated the recordings it offered to regulatory authorities as proof of authorization.

In some of the slamming/cramming cases, the FCC has alleged that the rogue carrier also billed consumers directly for its service, because the rogue carrier was not successful in pushing its charges onto the consumers' local exchange carrier bill. Conduct of this type does not involve cramming for unauthorized third-party charges, because the carrier is placing the charge for its own service on its own bill. This conduct nevertheless involves placing an unauthorized charge on a telephone bill, and the FCC has found that it also constitutes an unjust and unreasonable practice that violates Section 201(b) of the Communications Act.<sup>17</sup>

Since 2010, the FCC has pursued two major wireless carriers for allegedly placing unauthorized charges for their own services on their own bills. Both cases involved the carriers allegedly charging their subscribers for data services the subscribers did not expressly authorize.<sup>18</sup> The FCC ordered both carriers to notify affected customers of the applicable charges, to offer refunds, and to make a payment to the U.S. Treasury in lieu of a penalty. One of the cases required the carrier to refund at least \$52.8 million to affected consumers, and to pay \$25 million to the U.S. Treasury.

#### Rulemaking/Regulation

The FCC is also addressing cramming on the regulatory side. Fifteen years ago, the FCC adopted its first "truth-in-billing" rules, in order to help consumers detect cramming, slamming, and other fraud in connection with their telephone bills and telecommunications services. In

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<sup>17</sup> See, e.g., *Advantage Telecommunications Corp NAL*, supra note 16.

<sup>18</sup> *AT&T*, Order & Consent Decree, 27 FCC Rcd 13492 (Enf. Bur. 2012); *Cellco Partnership d/b/a Verizon Wireless*, Order & Consent Decree, 25 FCC Rcd 15105 (Enf. Bur. 2010).

2009, the FCC issued a Notice of Inquiry to explore whether, and if so, how, to amend its “truth-in-billing” rules; in 2011, in response to continued cramming problems, the FCC issued a Notice of Proposed Rulemaking to strengthen its rules; and in 2012, the agency in fact did so.<sup>19</sup> Among other things, the current “truth-in-billing” rules require both landline and wireless carriers to clearly and conspicuously: (1) identify the name of each service provider associated with a billed charge; (2) identify any change in any service provider from the preceding billing cycle; (3) provide a brief, non-misleading, plain language description of the services billed; and (4) display a toll-free number for subscribers to dispute, or inquire about, any billed charge. The “truth-in-billing” rules also require landline – but not wireless – carriers to: (1) separate charges by service provider; (2) set forth charges from third parties for non-telecommunications services in a distinct section of the bill; and (3) notify subscribers that the carrier offers subscribers the opportunity to block third-party charges on their bills, if in fact the carrier does so.<sup>20</sup>

When the FCC strengthened its rules in 2012, it also issued a Further Notice of Proposed Rulemaking on whether it should expand the coverage of the rules still more. The FCC asked whether it should expand all of the existing rules to wireless carriers; whether it should prohibit carriers from assessing charges for third-party products and services on a subscriber’s bill absent the subscriber expressly opting in; or whether it should altogether ban carriers from assessing charges for third-party products and services, at least on the same bills that contain charges for regulated telecommunications services. The FCC asked for additional comment on

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<sup>19</sup> See *FCC Cramming Order*, *supra* note 2.

<sup>20</sup> 47 C.F.R. § 64.2400-2401.

these and other issues last year, with the comment period officially closing in December 2013.

The FCC is now poised for action in that docket, and expects to consider any rule changes within the next several months.

To keep abreast of new and emerging kinds of cramming as well as new carrier billing technologies and practices, the FCC is also planning to host a workshop or similar event on these topics in the next six months.

### Consumer Education

In addition to its enforcement and regulatory work, the FCC also works to educate consumers about cramming. The agency has issued both printed and video consumer guides, as well as tip sheets on how to identify and report cramming.<sup>21</sup> The Commission also held a comprehensive public workshop on cramming in 2013. These outreach efforts, many of which involved close coordination with groups such as AARP, are intended to alert consumers to the fact that their carriers may charge them for third-party products and services on their telephone bills, and encourage consumers to review their bills carefully each month, paying attention to even small charges, as well as the descriptions offered for all charges, and who is responsible for them. The materials also encourage consumers to call their carriers about any charges they question, and any provider identified on the bill associated with such charges. In addition, our consumer education materials explain the FCC's "truth-in-billing" rules in plain

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<sup>21</sup> Federal Communications Commission, *Cramming: Unauthorized, Misleading, or Deceptive Charges Placed on Your Telephone Bill* (last visited July 24, 2014), available at <http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>; Federal Communications Commission, *Cramming Tip Sheet for Consumers* (last visited July 24, 2014), available at <http://www.fcc.gov/encyclopedia/cramming-tip-sheet-consumers>.

English, and tell consumers how to file complaints with not only the FCC, but also the Federal Trade Commission and state public service commissions.

### Enforcement Bureau Reforms

The FCC is proud of these strong enforcement actions, which are deterring cramming, but we will continue our commitment to do more to protect consumers. Since I joined the FCC four months ago, my first priority has been to make sure the great people and resources of the Enforcement Bureau are used as effectively and efficiently as possible. The Enforcement Bureau is embracing a modern enforcement philosophy that says we need to be smarter about how to deploy our limited resources. In many instances, that means working more closely and more frequently with our fellow law enforcement partners at the federal and state levels, just as we have in the cramming context.

We are focused on ensuring the widest possible compliance with the law and rules that have the most impact on Americans in the 21st Century. For example, America's growing reliance on wireless phones leaves them increasingly vulnerable to unlawful privacy-invading robocalls and text-message spam. Cellular and Global Positioning System (GPS) jammers that can disrupt critical infrastructure and public safety networks are more and more widely available and must also continue to be the focus our enforcement efforts. And the recently announced Strike Force within the Enforcement Bureau will combat fraud, waste, and abuse in the Universal Service Fund (USF). It is our duty to vigorously protect the integrity of the USF programs by ensuring that program funds are used for their intended purposes.

We are also in the vanguard of the FCC's Commission-wide Process Reform efforts. For many outside the Commission, our most significant efforts in this area are already evident in

our firm commitment to speedy resolution of both routine and significant matters. The reforms we have already adopted, and those in process, will ensure that the Commission's team of prosecutors will have the best chance at doing the most good for the greatest number of Americans.

Fundamentally, we are creating an Enforcement Bureau that is an efficient and smart prosecutorial unit. We are striving to be data-driven, nimble, creative, strategic and collaborative. Ultimately, I hope this will be good for consumers, good for industry, and just plain good government.

#### Conclusion

The FCC is the nation's federal regulatory authority over telecommunications carriers, and Congress has empowered the agency to combat unjust and unreasonable practices by carriers, as well as to adopt rules governing the conduct of carriers. Through its enforcement, regulatory, and consumer education work, the FCC is actively using these powers to address cramming and other unlawful acts by carriers that place unexpected and unauthorized charges on consumers' phone bills. We look forward to continued cooperation with the Committee and other regulatory authorities at both the federal and state levels toward the common goal of protecting consumers from these unjust and unauthorized charges.