

CRAMMING CASE STUDIES

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

Committee staff believes that the cases discussed below provide a representative example of consumers’ experiences with cramming. The cases highlighted include: residential consumers, small and large businesses, not-for-profit organizations, and federal, state and local governments. In presenting the cases, Committee staff is not including the names of the businesses that spoke to Committee staff about cramming. Some businesses stated that they did not want to acknowledge publicly the extent to which they have experienced cramming. Others expressed concern that publicly discussing cramming could negatively affect their relationships with telephone companies that, in some instances, are both their service providers and their clients.¹

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

I. RESIDENTIAL CONSUMERS

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

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

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

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

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

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

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

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

Jennifer Ngah – Fitchburg, Massachusetts³ In February 2010, Jennifer Ngah noticed that the amount of her automatic bill payment to Verizon seemed to be increasing each month. To determine the cause for the increased payments, Ms. Ngah reviewed her bill and discovered that several third-party vendors were charging her. One of the vendors had been charging her for over six months.

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

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

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

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

Barbara Arnold – Uniontown, Pennsylvania⁴ In March 2009, Barbara Arnold, a nurse, contacted Verizon to look for ways to lower her family’s monthly telephone bill. She was surprised when Verizon suggested that she consider cancelling some of the enhanced services Verizon said she was enrolled in. She had never noticed that she was paying for services from three separate third-party vendors, two of which were for voicemail. After talking to Verizon, she discovered that those third-party vendors had crammed more than \$220 of charges onto her telephone bills.

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

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

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

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

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

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

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

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

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

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

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

II. SMALL BUSINESSES

Physical Therapy Business⁶ A self-described “small business” owner in Alabama wrote Chairman Rockefeller a letter stating that cramming has been a “detrimental” problem for his physical therapy and rehabilitative services business. In May 2010, the business obtained more than \$450 in billing credit from a “website” service that had crammed a recurring monthly charge on its telephone bills for almost three years. To obtain that credit, the business owner and his staff “spent countless time” reviewing old telephone bills and talking to the telephone company and Alabama Public Service Commission. The website service claimed that one of the business’ employees enrolled the business in its service. The address that the website service claimed that the employee provided when she allegedly enrolled in the service is neither the business’ address nor the employee’s home address.

Popeyes and Krispy Kreme Franchisee⁷ An employee of a franchisee of Popeyes and Krispy Kreme restaurants reported in a letter to Chairman Rockefeller that third-party vendors crammed six of the company’s telephone accounts for many months with recurring monthly charges for services such as electronic facsimile. After working for two months to resolve the issue, the company obtained approximately \$4,200 worth of billing credits.

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

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

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

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

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

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

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

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

Real Estate, Lodging, and Golf Course Business Owner⁸ The owner of several businesses in Nevada told Committee staff that he discovered in February 2010 that seventeen different third-party vendors had been cramming charges onto the businesses' AT&T telephone bills for services such as online business listings, voicemail, identity theft protection, and streaming video for as long as twenty months each. He was particularly surprised to discover the various third-party charges because he believed that he had previously requested that AT&T block his telephone lines from third-party billing.

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

Bicycle Retail Store⁹ A bicycle store in Illinois told Committee staff that it discovered in December 2010 that its AT&T telephone bills included unauthorized charges for a virtual

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

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

facsimile and voicemail service called Contact Message Tech II. The charges totaled approximately \$1,500 over a 30-month period.

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

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

Industrial Service Company¹¹ An industrial service company in Virginia told Committee staff that it has battled cramming on its Verizon landline telephone bills since 2007 for services such as voicemail and credit repair. The company has sometimes had trouble finding a way to contact the third-party vendors that have placed charges on its bills. The company requested that Verizon block its telephone lines from incurring third-party charges, but it later incurred additional third-party charges on the same lines. The company complained to state regulators that its employees continued to have to spend time identifying and resolving crammed charges because Verizon's blocking system did not work. The company also advocated for state legislation to prevent cramming.

Drug Store¹² A drug store owner in Missouri told Committee staff that his store incurred almost \$650 worth of unauthorized third-party charges on its landline telephone bills for purported "technical support" between late 2009 and late 2010. When the drug store owner

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

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

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

contacted AT&T to inquire about the charges, AT&T told him that he needed to call the third-party vendor or billing aggregator to dispute the charges. The drug store owner then contacted the billing aggregator, and the billing aggregator stated that a drug store employee enrolled in the technical support service during a telemarketing call. Although the drug store owner asked to hear a recording of the telemarketing call, the billing aggregator did not play it.

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

III. LARGE BUSINESSES

Bank #1¹³ A large, multistate bank told Committee staff that third-party billing on landline telephone bills is a “ripe opportunity for fraud.” Cramming has been a problem on the bank’s landline telephone bills from multiple telephone companies since at least 2009. The bank has identified 75 different vendors that have crammed charges onto its telephone bills for services such as music downloads, voicemail, and directory assistance. The bank reported that it is difficult to identify crammed charges, in part, because the crammed charges are spread out among the thousands of pages of the many telephone bills the bank receives each month.

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

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

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

Bank #2¹⁴ Another large multistate bank told Committee staff that it has incurred hundreds of unauthorized third-party charges on its landline telephone bills since 2005. When the bank contacts a billing aggregator to dispute unauthorized third-party charges on particular lines, it requests that the aggregator block future third-party charges from being placed on those lines. Nevertheless, new third-party merchants subsequently cram charges on those same lines. The bank has not requested that its telephone companies block all of its lines from all third-party billing because the bank believes it would be very difficult to create a list of all of the bank’s telephone bills, and it believes that the telephone companies cannot implement blocking unless

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

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

the bank provides such a list. AT&T has told the bank that it is legally required to permit third-party billing.

Bank #3¹⁵ A third multistate bank reported that third-party charges have been crammed onto many of its telephone lines, including lines for vaults and fire alarms and other lines with unpublished telephone numbers. This bank stated that the crammed charges sometimes total hundreds of dollars per month. The bank also reported that it has experienced large increases in cramming when it has added large numbers of new lines to its telephone bills after acquiring other financial institutions. Multiple telephone companies have told this bank that they cannot block its lines from incurring third-party charges. Verizon recently told the bank that it would try to block the bank from incurring third-party charges in one state by imposing a block on the bank's billing telephone numbers, but Verizon stated that it was not yet ready to try to implement a similar block in other states.

Bank #4¹⁶ A fourth major bank reported that it has been battling cramming on its landline telephone bills from multiple telephone companies for several years. The bank experiences cramming most often on the bills it receives from the largest telephone companies. Between May 2010 and April 2011, the bank identified 360 instances of cramming on its landline telephone bills. The bank stated that it "is quite arduous and time consuming" to address crammed charges. Its employees spend an average of thirty minutes addressing each crammed charge. The bank reported that it has endured "a lot of scripted conversations" when it has contacted third-party vendors to try to dispute charges that the vendors have crammed on the bank's telephone bills. Some third-party vendors "fight tooth and nail" when the bank disputes crammed charges.

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

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

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

¹⁶ E-mail message from bank #3 employee to Commerce Committee Staff (June 20, 2011); Committee staff telephone interview with bank #3 employee (May 9, 2011).

Bank #5¹⁷ A fifth large multistate bank began to notice cramming on its landline telephone bills in 2010. The bank has since identified approximately \$20,000 of crammed charges during the first several months of 2011 for services such as fraud alerts, identity theft protection, voicemail, music downloads, and long distance. Many of the charges have been crammed onto unpublished telephone numbers for modems, alarms, facsimile machines, and other telephone lines that are not assigned to individual employees.

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

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

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

Auto Parts Retailer¹⁸ A large, nationwide auto parts retailer sent Chairman Rockefeller a letter estimating that the company has incurred \$550,000 in unauthorized third-party charges on its telephone bills during the past ten years. The company estimates that three full-time employees spend approximately 25% of their time dealing with cramming, thereby having cost the company approximately 26,000 labor hours and approximately \$400,000 in overhead expenses. Approximately 80% of the company's more than 3,600 locations have had charges crammed onto their landline telephone bills.

The company reported that it took years for one of the major telephone companies to assist the company with cramming by blocking third-party charges from its telephone bills. And the company explained that it still regularly experiences cramming on the telephone bills that it

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

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

receives from that particular telephone company for new company locations even though the company requests blocking of third-party charges whenever it orders lines for new locations. The company's letter to Chairman Rockefeller states:

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

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

Often, the carriers simply refer you to the third party biller or their third party clearinghouse. Often, they will attempt to persuade that someone within the company signed up for and authorized the services by phone or through the internet. [We have] consistently trained local store managers and communicated to carriers that local store managers lack the authorization to bind the corporation for these services. While we expect a team member to make a mistake from time to time, we believe our training is effective and view the continuation of cramming a purposeful decision on the part of carriers to circumvent communication to them regarding our corporate authority structure. In addition, our team members do not have store access to the internet. It seems unlikely they would go home and sign up their store for any of these services. There have been times when recordings have been made to evidence the alleged purchase of

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

services. While some calls sound legitimate, others, in our opinion do not. The carriers or clearinghouses cannot and/or do not ever produce any documentation purporting to actually be signed by an employee with any authority. One might only surmise that doing so results in a pecuniary benefit, not only to the crammers, but to the LEC's.

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

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

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

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

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

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

Movie and Game Store Chain²¹ A large, multistate movie and game store chain whose corporate policy requires the corporate office to authorize all services that are billed to the stores' telephone bills regularly incurs thirty to fifty crammed charges per month on the stores' telephone bills. Before the company began systematically checking for and disputing crammed charges, the company incurred even more crammed charges. Each crammed charge costs as much as \$100 per month for services that the company already provides its stores, or services that the stores do not want.

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

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

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

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

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

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

IV. NONPROFIT ORGANIZATIONS

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

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

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

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

V. FEDERAL GOVERNMENT

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

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

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

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

Postal Service employee reported that Granite seems to be able to stop third-party charges from appearing on the telephone bills that the Postal Service receives from Granite.

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

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

When NCTS-SD employees contact billing aggregators to dispute third-party charges, they request blocking of third-party charges on the particular telephone lines that incurred the disputed charges. Nevertheless, those same lines sometimes incur new third-party charges from different third-party merchants in subsequent months. AT&T has told NCTS-SD personnel that AT&T cannot block third-party charges from appearing on the Navy’s telephone lines.

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

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

VI. STATE AND LOCAL GOVERNMENTS

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

In February 2009, a city employee e-mailed AT&T a list of the unauthorized charges and stated that she had “spent hours calling and getting cancellation confirmations and retroactive credits to the tune of \$1500.” An AT&T Senior Account Manager replied by stating that he realized that cramming was a problem but could not do anything to help the city deal with it. Specifically, the AT&T employee said:

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

I checked on this and was not able to get any good ideas on how to resolve it. I would recommend calling the AT&T billing number to see if they could give you any info or even stop the billing on these 2 items. I wish I could have been some help but this is the best I could come up with.

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

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

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

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

In February 2011, the city requested that AT&T block all its lines from third-party billing because the city had "been getting a lot of 3rd party billing lately." AT&T responded by telling the city that it could not block its lines from third-party billing. AT&T stated in an e-mail to the city:

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

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

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

*Chicago, Illinois*²⁸ The City of Chicago told Committee staff that it continues to incur some crammed charges on its landline telephone bills despite its requests for AT&T to block all

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

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

third-party charges. In July 2010, the city's telecommunications manager e-mailed AT&T to state that the city's July 2010 invoice contained the same unauthorized third-party charges that the city had disputed for the past year as well as new unauthorized third-party charges.

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

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

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

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

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

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

I quickly found that the third-party companies, or the companies they represented, rarely challenged my disputes. . . . Due to the fact that I never had any tangible proof that someone in one of our offices did not order the services, I was never able to get them to give me retroactive credits. The burden of proof seemed to be on our end instead of on the end of the third-party billers and the companies for which they billed. Since there had not been anyone in our department auditing and challenging these charges before me, they were usually paid and [the department] was never reimbursed for any of these charges that occurred prior to my disputes. Throughout my time of handling these disputes, there was never a single time where one of the offices had to contact me because a needed service billed on their AT&T account by a third-party company had been disconnected. . . . I was never able to get AT&T to put blocks on our accounts to stop third-party charges, but I always asked the third-party billers in my disputes to block charges on their end from being charged on the line after the initial claim. They usually claimed to do so and I never saw a third-party charge on the same line again after a block was in place.

Los Angeles County, California³⁰ Los Angeles County, California sent Chairman Rockefeller a letter explaining that, since November 2009, the county has received more than \$306,000 in billing credits for past charges that had been crammed onto its AT&T landline telephone bills. County employees have spent more than 125 hours dealing with cramming since November 2009. After the county implemented a new billing system that enables it to see greater detail on its landline telephone bills, the county discovered thousands of instances of cramming for services such as voicemail, identity theft protection, privacy, and debt-related services. The county cancelled all such services and requested that AT&T block third-party charges from appearing on its telephone bills. The county does not believe that county employees were using any of the services it cancelled because no county employees have inquired about their loss of access to the services since the county cancelled them. The county continues to incur some crammed charges on its landline telephone bills.

Orange County, California³¹ Orange County, California has battled cramming on its landline telephone bills since 2001. For some period of time, county employees spent “upwards of 60 labor hours a month” dealing with 100-300 instances of cramming, or approximately \$3,000 worth of crammed charges, per month. Many or most of the crammed charges were for services that the county’s telephone systems already provided. The county’s routine practice was to contact AT&T to obtain contact information for the third-party vendors that had crammed charges onto its bills. In most instances, the county ended up refuting the charges via AT&T

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

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

because the county was not able to contact the third-party vendors to request billing credit. In 2008, after several months of negotiations, AT&T agreed to block third-party charges on the county's telephone bills. Even with blocking in place, the county continues to incur a small number of crammed charges and spends approximately five hours per month addressing those charges.

Houston, Texas³² The City of Houston, Texas currently identifies approximately ten crammed charges on its landline telephone bills each month for services such as photo storage, music download, and voicemail services. In previous years, the city identified as many as fifty crammed charges per month. The city has incurred crammed charges on telephone numbers for facsimile lines and operations lines that are not published and are not assigned to individual employees.

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

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

St. Louis, Missouri³³ Between October 2009 and February 2010, the City of St. Louis, Missouri identified approximately 360 instances of cramming on its landline telephone bills for services such as voicemail, diet plans, electronic facsimile, celebrity tracking, and identity theft protection.

An employee in the Controller's Office became particularly suspicious about the legitimacy of the third-party charges when she noticed that some of the charges appeared on Controller's Office lines. She then discovered numerous complaints on the Internet regarding the third-party vendors that had placed charges on the city's telephone bills. She called some of

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

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

the city employees whose lines were being charged for third-party services, and the employees told her that they had not heard of the services for which their lines were being charged. She believes that her subsequent request for AT&T to block the city's lines from third-party charges has reduced the amount of cramming on the city's telephone bills.

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

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