

Testimony of

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on

“Cramming on Wireless Phone Bills: A Review of Consumer Protection Practices and Gaps”

before the

Senate Committee on

Commerce, Science and Transportation

July 30, 2014



On behalf of CTIA – The Wireless Association®, thank you for the invitation to participate in today’s hearing. At the outset, I want to be clear – CTIA and its members share the Committee’s concern about cramming. Placing an unauthorized, misleading, or deceptive third party charge on a consumer’s wireless bill is wrong and simply not acceptable. That’s why, in November of 2013, wireless carriers ended their support of Premium SMS services, except for charitable and political giving and inmate calling services. Moreover, carriers allow customers to block all third-party charges and have worked to make it easier for consumers to obtain refunds for unauthorized or fraudulent charges.

CTIA became involved in the industry’s efforts to police Premium SMS and the associated carrier billing for these services through the Association’s role as the Common Short Code Administrator. Common Short Codes allow mobile users to engage and interact with a brand or service by using a short five-digit address to send text messages to a mobile application. CTIA, as the Common Short Code Administrator, assigns Common Short Codes to applicants allowing a single code to be used for the same application across multiple wireless service providers. Common short codes are used by commercial entities ranging from Dunkin Donuts to Wal-Mart, as well as by non-commercial entities, including government, charities, and political campaigns.

Short code campaigns can be employed to provide life saving information. For example, the Federal Emergency Management Agency’s text message program offers regular safety tips for specific disaster types and allows for a search to find the nearest shelters and disaster recovery centers by texting “43362” (“4FEMA”).¹ Another highly successful program is the Text4Baby campaign that has leveraged the power of mobile technology to help more than 700,000 new mothers and expectant women keep themselves and their babies healthy since the program’s creation.² Not all short code campaigns are so

¹ <http://www.fema.gov/text-messages>

² <https://www.text4baby.org/>.

serious -- they also can be used for purposes as varied as voting for one's favorite player or summoning an usher during a Major League baseball game.

While the overwhelming majority of short code campaigns involve no charge other than the carrier's standard rate for SMS messages, short codes also can enable users to support charities or political candidates. For example, the American Red Cross employed common short code 90999 to raise money for disaster relief in the wake of the Haitian earthquake in 2010, with donors contributing more than \$43 million. A 2012 study by the Pew Internet and American Life Project found that 1 in 10 Americans has made a charitable donation through a text message.³ Similarly, after the Federal Elections Commission granted limited approval for federal candidates, political committees, and political parties to collect political contributions through text message campaigns, the Obama for America and the Romney campaigns began using common short codes to solicit small dollar donations via mobile devices.⁴ Each of these programs was, and remains, opt-in for consumers. Short codes have also been employed by state Departments of Correction to enable collect calls placed by inmates to be completed and billed to the mobile phone of the called party,⁵ often a family member, who may be among the nearly 40 percent of American adults who have chosen to go "wireless-only" and forego subscribing to a wireline telephone.⁶

From their start, commercial, charitable, and political uses of common short codes issued by CTIA have been subject to written, publicly available guidelines administered both by the Mobile Marketing Association⁷ and CTIA.⁸ Carriers have looked to the "connection aggregators" who link content

³ Pew Internet and American Life Project, REAL TIME CHARITABLE GIVING, (Jan.12, 2012), available at <http://pewinternet.org/~media/Files/Reports/2012/Real%20Time%20Charitable%20Giving.pdf> at 2.

⁴ http://www.huffingtonpost.com/2012/08/23/obama-text-message-donations_n_1824250.html and <http://www.newsmax.com/Politics/Romney-text-messages-donations/2012/08/31/id/450534/>.

⁵ <http://www.txtcollect.com/>.

⁶ <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf> at 2.

⁷ <http://www.mmaglobal.com/files/bestpractices.pdf>.

providers to wireless carriers to supervise and enforce the consumer best practices and carrier-specific practices. In 2008, a year in which the Federal Communications Commission received only about 345 wireless cramming complaints from the nation's then 270 million wireless customers,⁹ the wireless industry, both individually and through CTIA, began independent monitoring of all short code campaigns to detect any violations of the consumer best practices.

Over the next few years, the number of consumer wireless complaints filed with both the Federal Communications Commission and the Federal Trade Commission remained low and continued to decrease even with the significant growth in the number of wireless connections. While neither the FCC¹⁰ nor FTC¹¹ complaint data suggested there was a significant problem in this area, the industry recognized that both wireless customers and their carriers were being victimized by fraudsters who crafted elaborate schemes to defeat the industry's self-regulation and third-partying monitoring. Where problems were alleged or identified, CTIA and its member companies worked with law enforcement officials to identify solutions and shut down entities that pursued cramming schemes.¹²

⁸ <http://www.ctia.org/docs/default-source/default-document-library/industry-best-practices.pdf?sfvrsn=0>, <http://www.ctia.org/docs/default-source/default-document-library/guidelines-for-mobile-giving-via-wireless-carrier-s-bill.pdf?sfvrsn=0> and <http://www.ctia.org/docs/default-source/default-document-library/guidelines-for-federal-political-campaign-contributions-via-wireless-carrier-s-bill.pdf?sfvrsn=0>.

⁹ Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), *Report and Order and Further Notice of Proposed Rulemaking* 27 FCC Rcd 4436 (rel. April 27, 2012)(at para. 20).

¹⁰ *Id.* at para. 20-21. The last time the FCC directly reported wireless-related cramming figures was in 2002 – at which time there were 92 complaints. Since then, wireless-related cramming complaints were too few to be included in the FCC's quarterly reports on Informal Complaints and Inquiries.

¹¹ The FTC's 2013 Consumer Sentinel report lists the number of complaints about "Mobile: Unauthorized Charges or Debits" for 2011, 2012, and 2013 as 626, 714, and 363. See <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> at 84. To put those numbers in context, in 2011 there were 306,300,207 active subscriber units, so complaints averaged 2.0 per million subscribers. In 2012, the wireless industry served 321,716,905 active subscriber units, with complaints amounting to 2.2 per million subscribers. In 2013, subscribership rose to 326,914,000 active subscriber units, meaning complaints represented 1.1 per million subscribers, or just 0.0001% and a decline of 49% from 2012.

¹² See, for example, the statement by the Texas Attorney General, <https://www.texasattorneygeneral.gov/oagnews/release.php?id=4576>, and the cases brought against Mobile Messenger, <https://www.texasattorneygeneral.gov/newspubs/releases/2013/Mobile-Messenger-POP.pdf>, and

As a further safeguard to consumers, beginning in February 2012, CTIA contracted with an outside vendor to verify information supplied to the Common Short Code Administration registry by companies seeking to lease short codes for premium SMS campaigns. CTIA's vendor uses numerous commercially-available databases such as Lexis/Nexis, Dun & Bradstreet, and the Better Business Bureau to confirm that the Content Provider displayed in the registry represents a legitimate company and is identified correctly in the registry. This vetting service satisfies the requirement of the California Public Utilities Commission that carriers be responsible for the content of their bills. Any discrepancies discovered during the vetting process are communicated directly to the carriers. Although the national carriers chose to discontinue support for premium short code campaigns in late 2013,¹³ CTIA has expanded the scope of its vetting to include all common short code lessees.

In addition to this front-end vetting, CTIA continues to work with outside vendors to ensure that codes are used in compliance with the applicable guidelines. When monitoring identifies problems, that information is sent to the carriers so they may take corrective action. These efforts and the national carriers' decisions to end support for premium short code campaigns (with the limited exceptions for charities and political campaigns) should combine to significantly reduce the opportunity for third-parties to use carrier billing platforms as a tool to commit fraud.

With the carriers' decisions to no longer support premium short codes for commercial campaigns, the remaining opportunities for third-party charges to appear on wireless bills are limited to instances involving direct carrier billing. Although CTIA has no first-hand knowledge of carrier practices in this

Eye Level Holdings,

https://www.texasattorneygeneral.gov/newspubs/releases/2011/030911eyelevelholdings_pop.pdf.

¹³ Ina Fried, "AT&T, Sprint, T-Mobile, Verizon Dropping Most Premium Text Service Billing in Effort to Combat Fraud," All Things D (Nov. 21, 2013), available at <http://allthingsd.com/20131121/att-sprint-t-mobile-verizon-all-dropping-most-premium-text-service-billing-in-effort-to-combat-fraud/#ina-ethics> and <http://www.atg.state.vt.us/news/att-mobility-sprint-and-t-mobile-will-stop-billing-problematic-third-party-charges.php>.

area, it is our understanding that each of the national carriers employs stringent vetting and safeguards to guard against any abuse of the process.

Thank you for the opportunity to participate in today's discussion.