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necessary to address this problem. As explained further below, it is ultimately in the interest of all stakeholders here – including regulators, consumer groups, and industry participants – to ensure that consumers are strongly protected against cramming of unauthorized charges on their wireless bills.

I. The FTC’s Vigorous Law Enforcement Efforts Against Cramming.

The Federal Trade Commission is an independent administrative agency charged with promoting consumer protection, competition, and the efficient functioning of the marketplace. The keystone of the FTC’s law enforcement mission is Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce.”² Section 5 encompasses a wide range of business practices, including advertising, marketing, and billing. The practice of placing unauthorized charges on consumers’ phone bills is prohibited by Section 5 as both a deceptive and unfair practice.³

The FTC has brought more than 25 enforcement actions under Section 5 to halt cramming practices and provide redress to its victims.⁴ These cases have resulted in tens of millions of dollars in consumer redress and refunded charges, and stringent court orders to prevent future cramming violations. The FTC works closely with federal and state officials in investigating and bringing cramming enforcement actions, and has engaged in consumer and

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business education and outreach programs to raise awareness of the problem. It also has sought input on the issue from stakeholders – industry participants, consumer groups, and state officials – including by seeking comments at a recent workshop dedicated to the topic of cramming.⁵

Based on this extensive experience, the FT

payments, which included discussions of the opportunities and challenges associated with placing third-party charges on wireless bills as a payment method.¹¹

In response to the FCC's Further Notice, various commenters provided different perspectives on the extent to which mobile cramming is a problem. The National Association of Regulatory Utility Commissioners, for example, noted that "evidence abounds that wireless cramming is a growing problem."¹² A coalition of consumer groups suggested that "wireless cramming is poised to become a major consumer fraud issue."¹³ These comments echo the FCC's observation that complaints about cramming on wireless accounts 17g9

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horoscope information by text message (SMS) to a consumer's phone. Consumers often report receiving a text message informing them of a subscription to a service of which they have never heard and that they never requested. And while the consumers who notice the third-party

payment services without line-by-line consumer review.²⁵ As the FCC also has recognized, “it often takes consumers months or years to detect unauthorized charges on their bills – if they detect them at all – because of the way third parties describe the unauthorized charges or the way carriers present the unauthorized charges on their bills.”²⁶ Many consumers also may be unaware that third-party charges may be placed on their phone bills in the first place. There is

measures will be sufficient to stop mobile cramming, or whether stronger consumer protections are necessary, requires a harder look at the effectiveness of industry standards.

Some commenters have suggested that the wireless billing platform differs significantly from landline billing and is less susceptible to cramming. The CTIA has noted that the wireless industry never developed a practice of charging for various communication services, such as

charge is billed.³³ As one example, a user may order a subscription to a weather alert service by sending a text to a certain number or by entering her mobile device number on a website; the consumer then receives a text message detailing the charges to be incurred with instructions to reply by text message or by entering a PIN code on the website to complete the order.³⁴ In this way, the provider of the service – the content provider – can be assured that the consumer in possession of the device actually signed up for the service. As an industry representative described it at the FTC’s Cramming Forum, this system requires a “pull” by a consumer – an affirmative action – that is different from the landline context, where third parties often “push” carrier-billed content on consumers, such as through telemarketing calls.³⁵ Wireless providers require that content providers billing on their platform adhere to the MMA Guidelines.³⁶

However, it is not clear whether the double opt-in requirement is being consistently followed or is otherwise effective at stopping cramming. In the Sentinel complaints that FTC staff have reviewed, consumers often report that they have not even subscribed to premium text message services. Charges are simply placed without any authorization. In the landline context, crammers have shown that they are able to fabricate records and thus circumvent requirements that they prove that consumers have authorized particular third-party charges. For example, in *FTC v. Nationwide Connections*, a convicted felon running a cramming operation from his jail cell was able to charge consumers for collect calls that were fabricated;³⁷ and in *FTC v.*

³³ See MMA Best Practices at 2.6.1; Verizon Comments at 5, 9-10.

³⁴ See MMA Best Practices at 2.6.1, 2.6.2; Verizon Comments at 5. The CTIA, via the Common Short Code Administrator (CSCA), assigns the five- or six-digit “short codes” that content providers use to communicate with the consumer. See, e.g., “About the CSCA,” available at <http://www.usshortcodes.com/aboutCSCA.html>; Cramming Forum Transcript at 131-32 (comments of Michael Altschul, CTIA).

³⁵ Cramming Forum Transcript at 129-130 (comments of Michael Altschul, CTIA).

Inc21.com, the defendants altered and falsified verification recordings for telemarketing calls that purported to show consumers' consent to charges.³⁸ Similar concerns are likely to arise in the wireless context. Indeed, a mobile security firm recently identified malicious software that, when downloaded to a consumer's phone, surreptitiously signed the consumer up for premium services by sending text messages without the users' knowledge.³⁹ Moreover, not all "double opt-in" procedures for premium services require that a consumer affirmatively respond to a confirmation text message – for example, a user could click through on a website accessed on a mobile device without viewing the full terms and conditions explaining that the user is authorizing a charge to a mobile bill.⁴⁰

Industry comments also point to frequent audits of the content providers whose charges appear on wireless bills. For example, in order for a content provider to send or receive commercial text messages to or from a consumer on a wireless provider network, it must submit details about the commercial campaign it intends to conduct for approval by each wireless provider. Each wireless provider independently approves whether a content provider can operate commercially on its network.⁴¹ Wireless providers and the CTIA also conduct audits of text campaigns to ensure that the content provider is following the pre-approved campaign.⁴² However, a recent lawsuit by the State of Texas shows that this process can be circumvented: as

³⁸ *Inc21.com*, 745 F. Supp. 2d at 991-92.

³⁹ The malware would also intercept confirmation messages so that consumers would not know they were being charged. See Lookout Mobile Threat Report, Lookout Mobile Security, 16-17 (August 2011), available at <https://www.mylookout.com/downloads/lookout-mobile-threat-report-2011.pdf>.

⁴⁰ Wireless Application Protocol ("WAP") billing enables third-party content to be charged directly to a wireless subscriber account and is used for content purchases via mobile devices. See Mobile Marketing Ass'n, "WAP Billing," available at <http://www.mmaglobal.com/wiki/wap-billing>. WAP billing transactions can be initiated with several screen taps on mobile websites with no reply to a text message to the device linked to that account required for the consumer to opt-in. See MMA Guidelines at 2.18.1.

⁴¹ Verizon Comments at 4-5; Cramming Forum Transcript at 133-34 (comments of Michael Altschul, CTIA).

⁴² Verizon Comments at 6; Cramming Forum Transcript at 129-130 (comments of Michael Altschul, CTIA).

consumers to fund mobile payments by placing those payments on their wireless bills.⁴⁹

However, in light of the significant number of mobile cramming complaints received, and the potential for expansion of the landline cramming problem to wireless bills, the FTC believes that some basic consumer protections are needed in mobile billing. At a minimum, all wireless providers should offer their customers the ability to block all third-party charges. Wireless providers should clearly and prominently inform their customers that third-party charges may be placed on the consumers' accounts and explain how to block such charges at the time accounts are established and when they are renewed.⁵⁰ And wireless providers should provide a clear and consistent process for customers to dispute suspicious charges placed on their accounts and obtain reimbursement. The FTC believes that such measures should be mandated by law or regulation to ensure that consumers have baseline protections.

Additional information is needed, however, to determine whether more extensive regulatory measures are warranted, such as default blocking of all third-party charges for wireless provider accounts. As noted, the Senate Commerce Committee has recently requested information from four major wireless providers to better understand the magnitude of cramming on wireless bills and what is being done to prevent it.⁵¹ Further, following up on its mobile payments workshop, FTC staff is seeking information from industry and consumers groups about the potential need for default blocking of third-party charges in the mobile billing context, as

cramming. FTC staff plans to address this issue further in its upcoming report on mobile payments.

IV. Conclusion.

Landline cramming has become a massive problem over the past two decades, affecting 15-20 million households a year, while supporting a billion-dollar industry for scammers.⁵² That situation should not be allowed to develop in the wireless context. The FTC believes that specific consumer protections are needed now – most importantly, the right to block all third-party billing to wireless bills – and that further assessment is necessary to evaluate the effectiveness of industry standards and whether further protections in this area are warranted.

By direction of the Commission, July 20, 2012.

⁵² FCC Infographic on Cramming, available at <http://transition.fcc.gov/cgb/cramminggraphic.jpg>; Senate Commerce Committee Staff Report at ii.