

FEDERAL TRADE COMMISSION

EXAMINING PHONE BILL CRAMMING

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FEDERAL TRADE COMMISSION

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1 We also want to remind you that we're still
2 accepting comments, so you can submit those comments via
3 e-mail at ftc -- the crammingforum@ftc.com, and you have
4 until May 31st to do that.

5 So, as you can tell, we have a court reporter
6 here that's going to transcribe the events of today, and
7 the transcript will be posted on the cramming forum
8 website.

9 So, feel free today to participate. We want an
10 open discussion here. If you have questions that you
11 think are pertinent to what the panelists are talking
12 about, raise your hand and we'll have someone come around
13 with a microphone so you can ask your questions. You
14 also will have an opportunity at the end of each panel to
15 ask questions or to give comments.

16 Before we get started, I have a few
17 housekeeping items that I need to go over. First, you
18 need to keep your name tag on at all times. Anyone who
19 goes outside of this building without an FTC badge will

1 street from the FTC is Georgetown Law Center. Look to
2 your right of the sidewalk, and that's where we'll all be
3 meeting. Everyone will be gathered by floors. You'll
4 need to check in with the person accounting for everyone
5 in the conference center.

6 In the event that it's safer to remain inside
7 the building, we will tell you where to go here in this
8 conference center. If you suspect any suspicious
9 activity, please notify security.

10 The restrooms are on the other side of the
11 lobby. You can follow the signs or ask security
12 personnel where those are.

13 Finally, please turn off your cell phones or
14 put them on vibrate. And we really look forward to
15 having a productive day and open discussion. And, once
16 again, thank you all for coming.

17 At this time, I'd like to introduce our
18 Director of the Bureau of Consumer Protection, David
19 Vladeck.

20 **(Applause).**

21 MR. VLADECK: Shameka is a tough act to follow,
22 but good morning. Welcome to the FTC conference center
23 for a workshop: Examining Phone Bill Cramming, a
24 Discussion. As Shemeka said, I'm David Vladeck, I direct
25 the FTC's Bureau of Consumer Protection. These remarks

1 are my own. They shouldn't be attributed necessarily to
2 the Commission or any individual commissioner.

3 So, we're hosting this forum today to examine
4 the persistent and harmful practice of phone bill
5 cramming, the placement of unauthorized charges on a
6 consumer or business' telephone bill. This is not a
7 trivial matter. The crammers have placed literally
8 hundreds of millions of dollars in bogus charges on
9 consumers' bills.

10 The purported goods and services for which
11 crammers have billed consumers range from
12 telecommunication services, like long distance and
13 collect calls, to goods and services unrelated to the
14 telephone, such as web hosting, directory listings, club
15 memberships. These bogus charges can be one-time hits,
16 but more often they are recurring monthly charges. Both
17 individuals and businesses are victimized by these scams.

18 For more than 15 years, the Federal Trade
19 Commission has engaged in a sustained campaign to attack
20 and prevent cramming. Working with our partners in
21 federal and state law enforcement, we bring enforcement
22 actions to halt cramming and to provide redress to
23 consumers. We conduct business and consumer education
24 and outreach programs to raise awareness of the problem.
25 And we work with the telecommunications industry to

1 prevent and attack cramming.

2 Our enforcement cases, brought against crammers
3 and the billing aggregators that place the cram charges
4 on consumers' bills have resulted in tough court orders
5 and obtained tens of millions of dollars in consumer
6 redress and refunded charges. Additionally, state law
7 enforcement agencies have brought hundreds of cramming
8 cases to provide redress to consumers and to further
9 prevent injury.

10 The U.S. Department of Justice has also
11 prosecuted criminally crammers and brought civil actions
12 to obtain penalties and injunctions against them. Now,
13 in spite of this sustained anti-cramming effort by
14 federal and state law enforcement agencies, cramming
15 persists. Law enforcement agencies continue to hear from
16 consumers who have been ripped off by cramming scams.
17 Families and businesses continue to find charges on their
18 phone bills for goods and services that they neither
19 sought nor used.

20 Addressing this continuing problem will require
21 law enforcers, the telephone billing industry, and
22 consumer groups to work together to identify more
23 effective means of preventing cramming, giving consumers
24 more control over the types of charges that appear on
25 their bills, and denying scam artists access to telephone

1 billing platforms.

2 The recent action against Inc21.com's crammers
3 -- and Doug Wolfe who litigated that case is here today
4 -- demonstrates just how easy it is for consumers -- for
5 crammers to use third-party phone billing platforms to
6 cause millions of dollars of consumer injury. The Inc21
7 crammers were able to place more than \$37 million in
8 bogus charges onto consumers' phone bills. They claimed
9 that the chargers were for web page hosting, business
10 directory listings, and other services, but the court
11 found that an astonishing 97 percent of the consumers --
12 97 percent of the consumers -- who were billed had never
13 agreed to purchase the purported services.

14 What is even more troubling is the court's
15 finding that only 5 percent of billed consumers were even
16 aware that the bogus charges had been put on their bills.
17 How did these crammers manage to perpetuate such a
18 flagrant scam for long enough to take \$37 million out of
19 consumer pockets? Well, the court found that after
20 receiving consumer complaints and refund requests about
21 the Inc21 charges, several telephone companies either
22 suspended or terminated Inc21's ability to place charges
on their subscribers' bills.

1 bogus addresses and used them to continue submitting
2 their bogus charges to the phone companies. The ease
3 with which these scams were perpetrated suggests that
4 industry and law enforcement must do a better job to keep
5 bad actors off the telephone -- telephone billing
6 platforms.

7 So, today's forum, we're going to focus on a
8 number of important questions. How does cramming happen,
9 and what injury does it cause? What steps does the
10 telephone industry, billing industry take to detect,
11 monitor, and prevent cramming? How do the mobile and
12 landline billing platforms differ in their approach to
13 preventing cramming? And what can government, industry,
14 and consumer advocates do, going forward, to protect
15 consumers from cramming?

16 Fortunately, we're able to draw on the
17 considerable knowledge and expertise of our panelists
18 today to answer these questions. We're fortunate to have
19 distinguished panelists from the telephone billing
20 industry, the consumer advocacy community, and state and
21 federal law enforcement agencies here today. Thanks to
22 each of our panelists for sharing their expertise.

23 We will have four panels, each focusing on a
24 particular aspect of the cramming problem. Our first
25 panel will look at how cramming occurs and the nature and

1 scope of the injury it causes to consumers. The
2 panelists will examine the ways in which unauthorized
3 charges are placed on the telephone bill and the goods
4 and services that are purportedly being billed and the
5 injury caused.

6 Next, representatives of the telephone billing
7 industry and law enforcement will examine the steps
8 industry takes to detect, monitor, and prevent cramming.
9 This discussion will focus on what the industry currently
10 does to keep crammers from accessing the billing
11 platform, to monitor billing data to detect ongoing
12 criminal activity, and to expel crammers from the billing
13 platform and to ensure they do not return. The panel
14 will also take a hard look at whether these steps have
15 been effective in identifying and preventing cramming.

16 Our third panel will examine the approaches to
17 cramming prevention used on mobile and landline billing
18 platforms. The panel will discuss whether the two
19 platforms differ in procedures for screening third-party
20 billers, monitoring cramming activity, and taking action
21 against billers who submit unauthorized charges. Our
22 panel will explore whether there are cramming prevention
23 mechanisms and best practices that could translate from
24 one platform to the other.

25 Finally, our last panel will brainstorm to find

1 potential solutions to enable industry, consumers, and
2 law enforcers to better prevent, detect, and reduce
3 telephone bill cramming. Panelists will discuss specific
4 initiatives at the state level and related ideas, such as
5 allowing consumers to request a block on all third-party
6 billing, requiring third-parties to get written approval
7 from consumers before placing charges on their phone
8 bills, and improving disclosure of third-party charges to
9 consumers.

10 I am looking forward to an informative
11 examination of the cramming problem and a lively
12 discussion of potential solutions from our panelists and
13 from all of you in the audience. I encourage each of
14 you, if you've not done so already, to submit written
15 comments to be included in the record of this forum.
16 Your ideas and expertise will be useful to the FTC, other
17 law enforcers, industry, consumer protection
18 organizations, and policymakers in developing sound,
19 informed measures to prevent telephone bill cramming.

20 Indeed, Congress itself is watching this forum.
21 We got a letter last night from the Chair of the Senate
22 Commerce Committee, Senator Rockefeller. I want to just
23 read you the first paragraph in a six-page, single-spaced
24 letter. Senator Rockefeller writes, "I applaud the
25 Federal Trade Commission's decision to hold a forum on

1 unauthorized, third-party charges on telephone bills. As
2 you know, the practice of placing unauthorized, third-
3 party charges on telephone bills, commonly referred to as
4 cramming, is a problem dating back to the 1990s. For far
5 too long cramming has cost consumers and businesses both
6 time and money as they have faced a seemingly endless
7 string of bogus third-party charges on their landline
8 telephone bills. It is time we put an end to this
9 harmful practice."

10 Senator Rockefeller goes on to commit -- to
11 seek to solve this problem through policy and legislative
12 means, and he and his staff are closely watching this
13 proceeding. So, you're speaking to an audience, I think,
14 broader just than the Federal Trade Commission and our
15 law enforcement colleagues.

16 But we at the Federal Trade Commission are
17 determined and committed to reducing cramming and the
18 injury it causes businesses and consumers. Thank you
19 once again to our panelists and our audience. A special
20 thanks to our law enforcement partners, including the
21 Federal Communications Commission and the Department of
22 Justice, for participating in this workshop. And special
23 thanks to Lois Greisman and her terrific colleagues in
24 the Division of Marketing Practices, many of whom you
25 will see today, for putting this workshop together.

1 Thanks so much.

2 (Applause).

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1 **SESSION 1: CRAMMING -- HOW DOES IT HAPPEN AND**
2 **WHAT IS THE INJURY?**

3 **(Telephone ringing).**

4 MR. DEITCH: I thought that was a good way to
5 get a cramming conference started and get your attention.

6 **(Laughter).**

7 MR. DEITCH: Good morning, everybody.

8 AUDIENCE: Good morning.

9 MR. DEITCH: Good. Let's try that again. Good
10 morning, everybody.

11 AUDIENCE: Good morning.

12 MR. DEITCH: This is a self-involved conference
13 where people have a chance to ask questions, give their
14 input. I'm going to start out with this panel. My name
15 is Russell Deitch. I'm an attorney with the Federal
16 Trade Commission. I'll be your moderator for Panel 1.

17 Before I do the introductions, I thought it
18 would be a good idea to give a little background or an
19 overview on the telephone billing system. The name and
20 the topic is going to come up a number of times during
21 the presentation. So, they say a picture is worth a
22 thousand words, so that I saved myself some time speaking
23 and you some time listening, let's move on to the next
24 slide.

25 There are generally four parties involved in

1 the landline telephone billing system. The first is a
2 merchant or a vendor; the second is a billing aggregator;
3 the third is called the local exchange carrier, or LEC,
4 which means basically a phone company; and the fourth is
5 a consumer. The consumer can be an individual; it could
6 be a small business; it could be any business.

7 What happens is a vendor submits a charge to
8 the billing aggregator. The billing aggregator submits
9 the charge to the LEC or phone company, and then the
10 charge is placed on a consumer's bill and sent to the
11 consumer. The flow of money goes in the opposite
12 direction. The consumer pays funds to the LEC or
13 telephone company; funds go to the billing aggregator;
14 and then funds go to the vendor.

15 And I should also do the famous disclaimer that
16 David Vladeck does in his talk. These are my views.
17 They don't necessarily represent the views of the
18 Commission or any commissioner. But at least this gives
19 you a pictorial background for the telephone billing
20 system to keep in mind during the first panel.

21 We're also going to be talking a lot about
22 cramming. You're going to hear the word "cramming" over
23 and over again. So, I thought it would be helpful to
24 give a working description before we get into the panel.
25 Again, this is for panel one, this description. And it's

1 one way of looking at cramming is causing unauthorized
2 charges for a variety of goods or services to appear on
3 consumers' telephone bills. So, now when you hear the
4 word at least you'll have some general idea of what it's
5 meaning, and our panelists will put it more into context
6 during their talk.

7 Now, with those background preliminaries out of
8 the way, I'm honored to introduce our distinguished
9 panel. Our first panelist is Beth Blackston. She's with
10 the Illinois Attorney General's Office. She's been
11 Assistant Attorney General since 1997. She's worked on a
12 variety of consumer protection issues and cases,
13 including litigating cases against companies allegedly
14 engaged in landline telephone bill cramming. She
15 received her law degree from Washington University in St.
16 Louis.

17 Our second speaker is Diane Dusman. She's a
18 senior assistant for the Pennsylvania Office of Consumer
19 Advocate. She has been a member of the Consumer
20 Protection Committee of NASUCA, which stands for the
21 National Association of State Utility Consumer Advocates.
22 And she's been there since 2003. She's also facilitated
23 a sub-committee of state telephone advocates from 2005 to
24 2010. She received her JD degree from American
25 University here in Washington, DC.

1 Our third speaker -- our third speaker is Craig
2 Graziano, who is attending by phone. Craig, can you hear
3 us?

4 MR. GRAZIANO: I can.

5 MR. DEITCH: Great. In 1999, he joined the
6 Office of Consumer Advocate, a Division of the Iowa
7 Department of Justice, and since 2008, he has chaired the
8 Consumer Protection Committee of NASUCA. He received his
9 law degree from Drake University in Iowa.

10 And the final speaker is Larissa Bungo. She
11 will be filling in for Jennifer Williams who cannot make
12 it today. Larissa is an assistant regional director in
13 our Eastern District Office for the Federal Trade
14 Commission, Eastern Regional Office. She was a lead
15 attorney in FTC v. Mercury Marketing, and she criminally
16 prosecuted some of the officers of that company as a
17 special Assistant U.S. Attorney. She received her law
18 degree from Case Western Reserve Law School.

19 And now with those preliminaries underway, I
20 turn it over to Beth Blackston.

21 MS. BLACKSTON: Can you all hear me? Good
22 morning. Thank you for giving me the opportunity to
23 speak today. As Russ mentioned, my name is Beth
24 Blackston. I'm an Assistant Attorney General in the
25 Consumer Fraud Bureau at the Office of the Illinois

1 Attorney General. Over the years, the Office of the
2 Illinois Attorney General has filed 30 civil law
3 enforcement actions against alleged phone bill crammers.
4 And the FTC and the states have brought numerous cases
5 over the years against both vendors and aggregators.

6 In our office, we use our Consumer Fraud and
7 Deceptive Business Practices Act, which is basically a
8 mini-FTC act. What we allege, among other things, is
9 that these companies are engaged in the deceptive
10 practice of placing unauthorized charges on consumers'
11 telephone bills. And typically we resolve these cases
12 with a judgment using the law enforcement tools available
13 to us, which are typically an injunction, civil
14 penalties, and restitution to aggrieved consumers.

15 Also, we attempt to resolve individual consumer
16 complaints through our informal mediation process. And
17 for cramming complaints, that means sending a copy of the
18 complaint to both the vendor and the aggregator, to the
19 extent that we can identify the vendor, we send it.

20 So, and we're still receiving cramming
21 complaints. We started receiving them probably in 1996,
22 '97, and they really took off, and then they kind of
23 quieted down for a couple of years, but in recent years,
24 we've seen the trend upward again. And we continue to
25 see phone bill cramming complaints.

1 So, one of the questions that this panel is to
2 answer is how does it happen. So, I thought I'd go -- we
3 have the same question, whenever we receive cramming
4 complaints, and whenever we open an investigation of a
5 particular vendor, what we do is we send a pre-suit
6 subpoena to the aggregator and request marketing
7 information, among other things, from the aggregator for
8 the vendor for which it's billing.

9 And common methods of solicitation include
10 telemarketing. We still see some telemarketing today.
11 It's less prevalent now because of the do-not-call
12 registry, but as Russ mentioned, both business consumers
13 and residential consumers are affected by phone bill
14 cramming. So, we do still see some telemarketing to
15 small business.

16 And our experience has been that one of two
17 scenarios applies. Often, we see a -- what we construe
18 to be a deceptive and untaped sales pitch, followed by
19 the taped verification conversation. And another
20 scenario we've seen is some cases we don't even believe
21 that the verification or the telemarketing actually took
22 place. And the reason we think this is because whenever
23 we request information from the company when someone has
24 complained to us, a lot of times we'll be provided with
25 the name of -- in the case of a small business, we'll be

provided with the name of someone who never worked for

1 had no idea what it was for. And we would contact the
2 company and the company would claim that the consumers
3 called a 1-800 number and requested the service. And the
4 consumers that we talked to didn't recall having done
5 this and denied all knowledge of it.

6 Another marketing method that we saw early on
7 in the process was written letters of agency, or LOAs.
8 It's basically a slip of paper with the consumer's name,
9 address, and phone number on it, and it purports to
10 authorize the vendor to charge the phone subscriber for a
11 product or service and to bill the subscriber on his
12 phone bill. And sometimes vendors would produce a slip
13 of paper that they claimed the consumer completed in
14 order to sign up for the service, and sometimes consumers
15 will take a look at it and say, well, that's not my
16 signature, here's my signature, it looks nothing like my
17 signature, I'm very upset, please prosecute this as a
18 forgery.

19 And what we think was happening is that the
20 vendors were just paying lead generators on commission,
21 which creates some not good incentives possibly to
22 manufacture some LOAs.

23 We also have seen, and this is now illegal in

1 do that anymore, but people would think they were
2 entering a sweepstakes and fill out the form and provide
3 their phone number, not realizing that it also was
4 authorizing some kind of telephone billing. And even
5 consumers who have knowingly filled out the sweepstakes
6 entry forms, they don't understand that they've made a
7 purchasing decision by doing that.

8 Another marketing method that we've seen, also
9 infrequent, is live check solicitations. We saw this for
10 I think it was an online yellow pages case where small
11 businesses received actual checks that really were
12 solicitations, but they just processed them as checks the
13 way they would process any other check that comes into
14 their business. But if you looked really closely on the
15 endorsement line there would be some kind of a fine print
16 that says that by endorsing this check you are
17 authorizing such-and-such company to bill you and to be
18 billed on your phone bill for these services. And a lot
19 of companies did not see that and complained about that.

20 Now, what seems to be the common method now of
21 marketing is online marketing. And I guess that's kind
22 of the equivalent of a letter of agency. Theoretically,
23 you can sign up for a telephone-billed product or service
24 at a vendor's website. And, in fact, when we subpoena a
25 billing aggregator and ask for what kind of marketing

1 materials their clients are using they'll often give us
2 the home page of the vendor. And you can sign up for the
3 service on the home page, and there's a place to enter
4 your information. But we don't think that's what
5 consumers are doing.

6 Instead, we believe that they or even someone
7 in their family are doing, falling victim to co-
8 registration, which was described very well in the Inc21
9 order, where you are online and you see a popup box for
10 like free recipes or free coupons or claim your TV that
11 you've won. And you provide that information in the box
12 because you think you're getting the other thing and
13 somewhere there might be some fine print that says that
14 you're agreeing to be billed for various services on your
15 phone bill.

16 But the consumers who've complained to our
17 office don't understand that they've done this and they
18 don't believe that they did. So, overall, the consumers
19 that we've talked to over the years do not understand
20 they're making a purchasing decision or that their phone
21 number operates as an account number.

22 Another question, what kind of goods and
23 services are billed? We just kind of went through and
24 pulled out different kinds of things we've seen in
25 consumer complaints over the years: voicemail service,

1 they're agreeing to a free trial or agreeing to receive
2 written information about the product and that they have
3 to take some action in order to be billed.

4 What injuries result? Obviously, people pay
5 unauthorized charges some time before they notice them on
6 the bill, and then they have to spend time trying to
7 obtain a refund or a bill credit. And sometimes that can
8 be difficult. When consumers work through our office,
9 we're having a little more success getting bill credits
10 for individual consumer complaints.

11 And really quickly, because I'm told I'm
12 running out of time, I wanted to give some sample dollar
13 amounts that we obtained when we subpoenaed billing
14 aggregators in the course of different vendor
15 investigations that we've done. The dollar amount, just
16 for Illinois consumers, typically ranges from five to
17 seven figures, usually thousands of billings to Illinois
18 consumers for each vendor. Here are some -- oh, and
19 also, we asked for refunds during that same time frame,
20 and they tend to run anywhere from 25 to 60 percent of
21 the amounts that were billed in that period, which is a
22 high, high refund rate.

23 So, some examples. One case, we had 2,527
24 consumers that were billed nearly \$36,000. In one case,
25 we had over 23,000 billings for a total of over \$466,000.

1 One case we had 25,000 billings in an eight-month period
2 at between \$35 and \$44.95 per billing for a total of
3 anywhere from \$875,000 to over \$1.1 million.

4 One vendor in 15 months billed 3,650 Illinois
5 consumers approximately \$800,000. And this is one of my
6 favorites, in one case over -- nearly 10,000 -- it was
7 9,842 Illinois consumers were billed for credit repair
8 services. And when we drilled down a little bit on the
9 phone numbers that were billed, we found -- this is for
10 credit repair services -- Steak 'n Shake, our county
11 coroner's office, a Super 8 lodge, and our local public
12 library's story line, which is just a recording.

13 So, bottom line, my personal opinion is that,
14 you know, the carriers and the aggregators tried a fix
15 several years ago with the best practices, and those best
16 practices, coupled with numerous law enforcement actions,
17 did seem to reduce the problem for a few years, but now,
18 as I mention, we've seen a resurgence in phone-billed
19 products and consumer complaints alleging cramming. And
20 we just don't see any real products or services that
21 anyone is using.

22 It seems that everybody on the billing side
23 could do a better job of knowing their customers and how
24 they are marketing based on some of the responses that we
25 get. And, honestly, this is just my personal opinion, I

1 a consumer complains about cramming it's virtually
2 impossible to find what the root cause of that charge is,
3 and as we've seen with the Inc21 case, apparently
4 sometimes consumers do nothing at all to lead to the
5 charge, it's a fairly random thing.

6 This was a bill that got our attention and it,
7 as you can see, the call pattern is not at all the kind
8 of call pattern that normal consumers would engage in.
9 We've got calls to the same number over and over again
10 for nearly an hour, and then a redial within seconds
11 afterward. Now, first with this kind of bill (inaudible)
12 focus around economic injury, although for (inaudible)
13 affect a lot of consumers in the households, but mostly
14 (inaudible) this type of -- would be just the recidivist
15 kind of bill that led to a lot of familial turmoil and
16 really a lot of upset in households.

17 Cramming is on the increase in Pennsylvania,
18 judging by first quarter reports, although of course we
19 see that whenever cramming shows up in the news a lot, we
20 tend to get more complaints, obviously because people see
21 that others have been ripped off and they start looking
22 at their own phone bill. There is an increased vigilance
23 when it gets into numbers, which is why we're grateful
24 for this kind of opportunity to bring it onto the public
25 light. And we have also cooperated with Senator

1 Rockefeller and his investigation.

2 Another example that you'll see -- we found
3 destinations on these bills that we really didn't even
4 know existed. It was quite a lesson in geography. But
5 you can see \$2,172 is going to get your attention on a
6 phone bill.

7 Now, when faced with the complaint about this
8 bill, what we learned was that the carrier's response
9 was, any calls made from your phone you're responsible to
10 pay them. And they basically told people that they had
11 to pay these bills, no matter how high. Sometimes they'd
12 offer an adjustment of some sort. We didn't find that
13 satisfactory.

14 It was pretty clear on investigation of the
15 legal bases for these and of course our research led us
16 to the Verity case, which was an FTC case some years ago,
17 showing that this type of calling pattern resulted from
18 something called Trojan dialers, which was a program that
19 when automatically downloaded onto a customer's computer
20 would generate these kinds of charges. We weren't even
21 sure when we really drilled into it and talked to the
22 aggregators that were involved in this, you know, whether
23 the calls were even made to the destinations that
24 appeared.

25 So, it was clear to us that crimes were being

1 committed. In Pennsylvania, we have several laws that we
2 can draw on, but our primary one is our specific

1 crazy, but we said, hey, it's an investigation. So,
2 here's the (inaudible) language, you accept that you will
3 be charged and pay \$2.99 per minute along with a \$1.99
4 charge for the actual long distance connection on your
5 local phone bill by TELUS Billing. So, that was supposed

1 it's comparable to what Craig Graziano uses in Iowa. One
2 call to the carrier to say I did not authorize this
3 charge on my bill should resolve the dispute on the bill.
4 If the customer says I didn't authorize it, the carrier
5 is duty-bound under this reg to say we'll take it off of
6 your bill, you don't need to pay it, we will recourse it
7 and we will send it back to the initiator of the charge.
8 That doesn't guarantee that the initiator of the charge
9 won't try to collect it otherwise, but we've seen very,
10 very few cases. It's really rare. I can think of maybe
11 two where somebody got an independent bill from the
12 initiator of the charge. That happened later with a
13 company called Buzz Telecom, which is no longer around.

14 But among other things, our reg requires that,
15 you know, the charge be removed and that the customer be
16 advised that they still can file a complaint even with
17 the removal of the charge.

18 The first settlement that we arrived at with
19 our carrier in Pennsylvania and the aggregators that flow
20 the charges through led to over \$700,000 in refunds and
21 credits, just to Pennsylvania customers who complained.
22 That's not everyone who experienced the charges but
23 everyone who complained about the charges.

24 Our settlements are not limited to monetary
25 relief. We also have consumer education components,

1 education of customer service reps about the problem,
2 what they should be telling customers on how to avoid the
3 problem, and reporting requirements on what the companies
4 have done, you know, compliance effort, which is pretty
5 typical.

6 So, we've talked about how it happens. We feel

1 with some of the smaller companies in Pennsylvania, I've
2 seen that they have systems in place where they -- and I
3 call it aberrant charge kick-out, if they have a bill
4 that goes through that shows a far higher level of usage
5 then the customer has ever had before or a charge that is
6 really anomalous compared to the customer's prior billing
7 pattern, they'll kick it out and make a specific call to
8 that customer saying, hey, we've noticed a change in your
9 bill or a charge that's extraordinarily high, can you
10 verify for us that you actually made this charge. And
11 they put their customer service reps to work on that sort
12 of issue. So, can we look to other industries for
13 possible assistance in determining information?

14 You'll see where this is just a slide that
15 shows, having caught up my research file for what's going
16 on in Pennsylvania, these are just a selection of names
17 of charges that have been disputed in Pennsylvania, just
18 in late 2010, early 2011. And except for the aggregated
19 names, the other names only have appeared maybe two or
20 three times. It's a lot of different entities.

21 The charges, unlike the huge unauthorized long
22 distance charges we saw earlier, are now, as we know,
23 very small charges, a lot easier to overlook on a bill,
24 and they appear up to six months. And people still have
25 a problem, even with our reg in place and with all the

1 MR. GRAZIANO: Okay, if there's any problems
2 with audibility, please -- please interrupt me.

3 I first want to thank the Commission for
4 convening this forum, for inviting our participation, and
5 for its body of work over the years in combating the
6 problem. Decisions like Inc21 and Verity before it are
7 an enormous help to those of us in the states who are
8 fighting the same battles.

9 Again, I'm with the Office of Consumer
10 Advocate, Iowa Department of Justice. Our offices have a
11 steady enforcement effort in place on cramming and
12 slamming for nine years. We submitted some written
13 comments. What I thought I would do this morning is
14 scratch the surface, because that's all I have time to
15 do, regarding the types of complaints we have seen and
16 then say a bit about our enforcement effort.

17 Our statute authorizes the State Utility Board
18 to assess a civil monetary penalty up to \$10,000 for a
19 violation. The statute itself doesn't use the term
20 "cramming." It used the term "unauthorized change in
21 service." And on the definitions, I'm only going back to
22 a comment our consultant made during our rule-making
23 proceeding years ago. She said, "The key point is to put
24 in place a -- is to put in place a set of rules that will
25 cause a fraudulent, unfair, and deceptive practice. We

1 can call it slamming and cramming and whatever we want,
2 but when you (inaudible) class it (inaudible) fraud,
3 trying to get people to pay for something they haven't,
4 in fact, bought. Our statute excludes wireless services.
5 As a result, virtually all of our experience has involved
6 wire-run service. Wireless complaints in Iowa are
7 addressed by another division of the State Attorney
8 General's Office using the Consumer Fraud Act.

9 Over the years, our office has seen complaints
10 involving allegedly unauthorized services for long
11 distance services, collect calls, directory assistance,

1 claims in which hackers would place calls from a
2 consumer's computer, often to pornographic websites at
3 remote locations on the globe, then succeed in having the
4 considerable charges show up on the local phone bill.

5 In 2006, we saw hundreds of complaints against
6 a company known as Buzz Telecom. These complaints
7 alleged misrepresentations in the marketing of a long
8 distance service, especially to seniors, and billing was
9 (inaudible) provided.

10 (Inaudible) following enforcement activities,
11 not just ours. In recent years, for example, we haven't
12 seen many complaints involving collect calls. What we
13 have seen in recent years are repeated complaints
14 involving the two marketing strategies described by the
15 Inc21 court: third-party verification and internet
16 conduct. With respect to third-party verification, we've
17 seen many complaints over many years in which consumers
18 tell us that the billing companies or someone acting on
19 its behalf, probably the telemarketer, has doctored the
20 recording or pieced them together to make it appear an
21 authorization was given when, in fact, an authorization
22 was not given.

23 It is difficult for consumers to remember the
24 details of a telephone conversation that occurred months
25 ago (inaudible) remember enough to make a credible

1 complaint. We've seen numerous complaints alleging other
2 types of deficiencies in the third-party verification
3 process. Sometimes the person whose name is given on the
4 recording as having authorized the charges turns out
5 never to have worked for the small business being billed.

6 Of course we're ever seeing complaints in which
7 misrepresentations have allegedly been made during the
8 unrecorded solicitation portion of the telemarketing
9 call, often beginning with an alleged misrepresentation
10 that the telemarketer is calling on behalf of the
11 consumer's local phone company -- local phone company.
12 The alleged misrepresentations continue from there. For
13 example, you've overpaid and you need to verify some
14 information in order to receive a credit.

15 We heard many recordings, often involving free
16 trial offers, in which the key words supposedly
17 constituting an authorization for the bills are spoken
18 too fast to be understood or are otherwise inaudible.

19 The other category of complaint I wanted to
20 highlight involves allegedly bogus internet signers,
21 again for services billed to the local phone bill. I

17

17

1 that the consumers replied as part of the alleged order
2 had not been the consumers' phone number for 17 months.

3 From a preventive standpoint, it appears that
4 allegedly offending companies have commonly failed to
5 institute any reasonable processes or procedures or
6 security checks to verify or validate the genuineness of
7 the alleged orders. One of my consumers expresses this
8 (inaudible) that if I wanted to fill out the form and
9 put, say, your phone number, I could easily do so. I
10 could use your or any other number I wanted. Why are
11 they not required to ensure the actual owner is giving an
12 okay?

13 Another consumer echoes this same observation:
14 I had to answer five questions to verify my identity in
15 order to even ask about my phone bill, but someone else
16 can sign me up and bill me for a service I've never heard
17 of without any verification at all?

18 In terms of solutions, and I'm talking now
19 about all of these claims, our office looks to the civil
20 monetary penalty. Over the past nine years, we have
21 filed hundreds of petitions against scores of companies
22 seeking civil penalty for alleged cramming and slamming
23 violations. The vast majority of these cases have been
24 on terms including the civil monetary penalty. Our
25 filings have represented only a fraction of (inaudible).

1 With respect to our efforts to secure the
2 penalties, companies often tell us we issued a credit,
3 this is not a lot of money, you should let it go. We're
4 not often persuaded. What is not a lot of money in any
5 one case may be quite a lot of money in the aggregate.
6 In 2005, for example, I think 11 Iowans, each disputing
7 \$5 and \$8 for a single domestic collect call lodged
8 complaints against two billing companies.

9 A Commission press release later revealed a
10 massive fraudulent billing scheme that collected more
11 than \$30 million in bogus charges from (inaudible).
12 Along similar lines, an Inc21 court observed that only 5
13 percent of the billed customers in that case were even
14 aware that they had been billed.

15 The problem is relying on credit as a solution
16 to the cramming problem is that many companies will issue
17 credits in cases in which consumers complain but pocket
18 the money in cases in which consumers did not complain,
19 because so many consumers do not complain, the offending
20 practices remain profitable despite the credits, so there
21 is no incentive to stop.

22 The penalties by contrast take the profit out
23 of the offending practice. They give the companies an
24 incentive to stop. They have a (inaudible) not only with
25 respect to the particular company but also with respect

1 to the industry as a whole.

2 Our statute does not require proof of intent to
3 violate. That omission advances the statutory goal.
4 Because direct proof of a company's state of mind is
5 rarely available, requiring proof of intent to violate,
6 would mean that intentional violations would easily
7 indicate sanction and even when the violation is not
8 intentional such conduct is often the result of negligent
9 and independent behavior. Civil penalties are designed
10 to remedy such sloppy business practices so that such
11 behavior will be policed and cleaned up.

12 Our statute similarly does not require proof of
13 a theory (inaudible) violation. When we see the troubles
14 and complaints, we can proceed without needing to wait
15 and see whether additional complaints reveal a series or
16 pattern -- a series or pattern of potential violation.
17 Such (inaudible) the way it enforces worse. When
18 enforcement is left to wait, most of the time there is no
19 enforcement at all.

20 Artful operators are free to use multiple
21 corporate entities in order to mask the scope of their
22 operation. They are free to move from one corporate
23 shell to another once complaints start to gain the
24 attention of regulatory officials. There are also
25 practical difficulties associated with pattern cases.

1 MR. DEITCH: Thank you, Craig.

2 MS. BUNGO: Good morning, everybody. I'm
3 Larissa Bungo. I'm the Assistant Regional Director for
4 the East Central Region, which is located in Cleveland,
5 Ohio. The East Central Region covers an eight-state
6 territory which includes Ohio, Pennsylvania, Michigan,
7 West Virginia, Virginia, Delaware, Maryland, and the
8 District of Columbia.

9 Prior to becoming the Assistant Regional
10 Director, for 15 years I was a staff attorney who was
11 responsible for investigating and litigating consumer
12 fraud -- civil consumer fraud matters. And I was the
13 lead attorney in a matter called FTC versus Mercury
14 Marketing, which also resulted in a criminal prosecution,
15 and it was my privilege to serve with Jennifer Williams,
16 the AUSA who would have been very pleased to tell this
17 story to you directly, but unfortunately had a family
18 emergency and could not be here. So, I will try to do
19 this story justice and tell you the tale of United States
20 versus Neal Saferstein.

21 Giving, again, a little bit of the background,
22 the FTC's case began in the early 2000s, as we saw the
23 emergence of cramming take place. We brought a case
24 against Mercury Marketing and Neal Saferstein, alleging
25 that the company was misrepresenting that consumers had

1 purchased services. And they stipulated to a consent
2 agreement and agreed not to bill without authorization.
3 Unfortunately, they continued their practices unabated.

4 The states brought several actions against
5 Mercury, which now changed its name to GoInternet. Beth
6 Blackston brought an action on behalf of the Illinois
7 Office of the Attorney General against Mercury Marketing,
8 as well as several other states. And we moved for
9 contempt on this stipulated consent order. We did obtain
10 a \$58 million contempt judgment, but I must say that this
11 cramming operation did not end until the U.S. Attorney's
12 Office took interest in it and a search warrant was
13 completed.

14 So, on to Jennifer's presentation. Being the
15 good prosecutor that she is, she would probably start
16 with the product. And I'm going to do that. This is a
17 picture of a law firm -- a web page for a law firm that
18 you might recognize, Skadden & Arps. As we note, it is
19 listed as Skadden & Arp here. And what GoInternet was
20 doing is basically they had a massive scheme to defraud,
21 which I will reduce to five components.

22 The product was an internet web page which was
23 purportedly offered to help small businesses raise their
24 internet presence. Remember, this is back in the early
25 2000s. You'll note they did not just pick on small

1 businesses, because Skadden is an international law firm,
2 certainly is not a small business.

3 Skadden, of course, had its own very legitimate
4 web page at the time, which note some of its offices
5 around the world. They had no use for the product that
6 GoInternet had created for them. So, how does -- how
7 does a charge for a product or service like this end up
8 on a consumer's phone bill? I'll tell you that in the
9 GoInternet case there were over 350,000 victims. The
10 company was bringing in \$50 million a year, charging
11 \$29.95 to consumers' phone bills, in this case, small
12 business owners. It was quite lucrative, as you can see.

13 How they did it was they were very clever.
14 First, things begin with a pitch. The pitch is seemingly
15 innocuous. It's the telemarketer -- and by 2003,
16 GoInternet had 1,000 telemarketers contacting consumers
17 every day, and they would ask to speak to somebody who
18 had authority to accept the mail.

19 And the pitch would go something like, "I just
20 want to send you a package in the mail. I need to speak
21 to somebody with authority. Are you the business owner?
22 Are you the manager?" And usually the representative
23 will say, "No, I'm not, but what is this about. If it's
24 just to send a package in the mail, I can accept the
25 package." "Oh, you do have authority to accept the

1 package, then, or the service. Right, okay, well, I just
2 need you to verify some information, then."

3 And what would happen on the verification,
4 then, is the representative would be asked if they agreed
5 to accept the service. Now, having been tricked into
6 believing that all they were doing was agreeing to accept
7 the service of mail, these customers, these purported
8 customers, were ill-prepared for the fact they eventually
9 were going to be billed \$29.95 for this product that was
10 going to come and be offered in the package.

11 So, again, something seemingly innocuous.
12 Again, as my colleagues have said, usually not a
13 memorable conversation. Most of the consumer victims
14 that we talk to don't have a recollection of that
15 introductory call and, in fact, I would argue, this is my
16 personal view, that it is because the call is not
17 intended to be memorable. And only the back end
18 conversation is recorded, so there is no -- there's
19 nothing to replay about how they got to the verification
20 of their name and telephone number.

21 In the Saferstein and the GoInternet matter,
22 there was a double layer of fraud in that Saferstein
23 directed his vice president of customer service to also
24 create fake verification tapes when necessary. So, after
25 they had tricked the consumer into agreeing to accept the

1 products and services, when necessary he would also help
2 to fabricate the evidence supporting the sale.

3 In terms of the package that I mentioned, they
4 would say a package will be arriving. The package was a
5 non-descript white envelope, eight-and-a-half-by-eleven,
6 nothing on it to indicate that a purchase transaction had
7 occurred. It was treated like junk mail because it
8 looked junk mail. It usually ended up, unfortunately, in
9 the trash bin without customers ever knowing that there
10 was some obligation on their part to call the company and
11 try to cancel. It was offered as a free trial. You have
12 15 days to try out this internet ad that GoInternet
13 wanted to create for the company.

14 And in the package would have been the proof
15 web page, which GoInternet described itself as a proof.
16 It was their idea that the customer would receive this,
17 it's based on a template, and that they would have to
18 call in and make it more unique or specific to the actual
19 business. Now, the project, again, based on templates,
20 is bare-bone and often mistake-ridden.

21 And another thing that I would point out is
22 GoInternet used a sub-domain rather than a domain, so you
23 can see -- it might be hard to note -- but at the top
24 here, the web address is myinformation.com/skaddenandarp.
25 All of the web pages were hosted behind the name

1 information or internetweb, which is the domain name that
2 GoInternet used. And they did not register any of these
3 web pages. So, unless the customer knew the exact web
4 page address, they weren't going to find it when they
5 searched for it on the internet.

6 So, there again is another layer by which this
7 could pass under the radar. They weren't expecting a
8 charge to appear on their phone bill, and they didn't
9 know that a service had been created for them that would
10 be available on the web.

11 The web pages, telemarketers, again, I
12 mentioned, 1,000 telemarketers, they're making 1,500
13 sales a day. They were creating 7,500 web pages a week
14 for small businesses. Notably, there was only one web
15 designer tasked with making changes to the web pages
16 should a customer call in and say they wanted to change
17 the service and make it more specific to that particular
18 company. And I would argue that that was one of the
19 strongest pieces of evidence that Saferstein knew that
20 this business was engaged in fraud. In fact, he knew no
21 one would be calling to make requests to change the web
22 pages to make them more specific.

23 I'll show you another example of a mistake-
24 ridden web page. You might recognize this company -- Al
25 Jazeera. It appears Mr. Al-Jazeera sells televisions.

1 But most of you may recognize Al-Jazeera as an Arabic
2 language broadcasting company. And Al-Jazeera paid for
3 several years before recognizing that they were billed,
4 as did law firms, as did churches. I can tell you about
5 some web pages that I saw where the business hours for
6 the churches were listed as Monday to Friday, 9:00 to
7 5:00, accept Visa and MasterCard.

8 There were web pages for large companies like
9 Northrop Grumman, except they were depicted as a law
10 firm. Someone must have called and heard the word
11 defense contractor and thought defense must be a law
12 firm, created a web page just like the one for Skadden.
13 So, you know, you would have Northrop Grumman, General
14 Law Practice, defending your legal rights, would be the
15 template for Northrop Grumman.

16 On the payment, so we've talked about the
17 pitch, the package, and the product; on the payment,
18 Saferstein was quite proud and would boast to other
19 officers in the company that he believed the LEC billing
20 process enabled -- enabled his company to perpetuate its
21 fraud because consumers just routinely pay their phone
22 bill and they aren't going to check it.

23 So, with that in mind, he represented that the
24 product that -- that Mercury was selling or GoInternet
25 was selling was internet services, because that was

1 permitted as a line item on the LEC bill. And they did
2 offer dial-up service and e-mail, but their main business
3 was this web presence through the web pages.

4 The phone bills for a small business owner, you
5 can imagine, are quite lengthy. The \$29.95 charge did
6 appear on a separate page, but because it was cast as
7 internet services, what we would hear from the consumers
8 is they would say, well, I thought it was my regular
9 internet provider, I thought this was from my internet
10 service that I would want. I had no idea that there was
11 a web page created for my business and I would have no
12 need for that, nor would I want it and certainly I didn't
13 authorize it.

14 But months and years went by, and these
15 businesses would pay these charges, not recognizing that
16 they had been scammed and they had been crammed, in fact.
17 Eventually, when somebody from the company would discover
18 the charges, I'll get to my last P, which is what I'll
19 call the panic. Panic ensues; the customer realizes,
20 gosh, I've been paying for something, I don't know what
21 it is, I don't know where this originates, and then you
22 have this pattern of trying to trace back how did this
23 \$29.95 charge originate.

24 And they would call the 800 number listed.
25 GoInternet went through aggregators, so there was always

1 a third-party contact first. They would contact the
2 aggregator, who would say you need to contact GoInternet
3 directly. GoInternet would promise a credit or refund
4 and then wouldn't issue it. So, there were attempts to
5 thwart the credit or refund getting back into the
6 consumers' pockets.

7 In total, our loss calculation for the criminal
8 matter was over \$50 million, over 350,000 victims in the
9 scheme. The criminal indictment for Neal Saferstein, the
10 vice president, who was the president of the company,
11 Tyrone Barr, who was the vice president of customer
12 service who created the fake tapes, and Billy Light, who
13 unfortunately committed perjury during the FTC's
14 proceeding, was a 27-count indictment. All three
15 officers did plead guilty to the charges. Saferstein was
16 recently sentenced just last fall to 23 years for his
17 crimes.

18 I think that the GoInternet matter is a good
19 example of the great cooperation amongst the states and
20 several law enforcement agencies, along with the U.S.
21 Attorney's Office, the FTC, FBI, Postal Inspection
22 Service, and IRS worked together to bring this matter to
23 conclusion, but I must say it took 10 years from start to
24 finish. That's a long time and a big investment to
finally put matter to

1 conduct.

2 I'm trying to look through my notes to see if
3 there's anything else Jennifer would want me to highlight
4 to you. And I might ask if there are any questions that
5 anyone has as I'm looking through about the scheme.
 Sure.

1 there's going to be a discussion of potential solutions
2 for people to discuss. Are there other questions for
3 people? Yes, sir?

MR. MCGLAMERY: I have no question, butInc.00 TTf-Yes, sir

1 know, you've got a bill.

2 MR. DEITCH: And could you, for the record,
3 could you state your name and the organization you're
4 with?

5 MR. MCGLAMERY: Yeah, my name is John
6 McGlamery. I'm with the Nevada Attorney General's
7 Office, and I'm speaking on the next panel, so . . .

8 MR. DEITCH: Another preview. Yes?

9 MR. BRODER: My name is Betsy Broder, and I'm
10 from the FTC. So, my question is for our state
11 enforcement partners. Have you seen the same entities,
12 individuals, come up time and time again in your
13 enforcement cases? That is, do you see a lot of
14 recidivism? They'll just turn the names of the companies
15 and (inaudible) doing what they're doing as Larissa
16 described with Neal Saferstein's company.

17 MS. BLACKSTON: We don't know if that's
18 happening or not truthfully in Illinois. I mean, we'll
19 get -- it's always a different corporation with a
20 different person who is the president or the secretary,
21 but beyond that -- and it's usually an LLC and it's
22 difficult to tell that -- whether there's overlap.

23 I will say for one of our first round of
24 cramming cases we negotiated and settled several of them
25 at the same time, and the checks were cut for the

1 separate cases from the same person. And we did not know
2 that they were connected.

3 MR. DEITCH: One other question for the panel
4 is what's a consumer to do when they find cramming
5 charges on their phone bill? What do people think or
6 some good advice or suggestions for that consumer.
7 Diane?

8 MS. DUSMAN: In our cases, we required -- in
9 our settlements, we required the company to alert the
10 customer when they complained about an unauthorized
11 charge to the possibility of putting a third-party charge
12 block on their phone or an international call block on
13 their phone. And we asked them to -- the stipulation
14 required them to do that at no charge to the customer.
15 There were some carriers that were charging to put blocks
16 on, and we felt where people had been defrauded, that was
17 not a fair -- a fair charge. So, that's one method of
18 just trying to avoid it altogether.

19 MR. DEITCH: Anybody else have --

20 MR. GRAZIANO: This is Craig. In Iowa, the key
21 thing we would recommend is simply to file a complaint
22 with the Iowa Utility Board. The Utility Board is good
23 about getting refunds for consumers when they deserve to
24 have refunds. And that also gives our office an
25 opportunity to evaluate what the consumer says and what

1 the company says and whether -- whether a civil penalty
2 proceeding should be instituted.

3 MS. BUNGO: And this is Larissa. I would
4 encourage the consumer to contact their phone company
5 directly and let the phone company know that they believe
6 they are a victim of cramming. And I think in most cases
7 the carriers will try to remedy the situation.

8 Another thing I forgot to mention that I think
9 is problematic in these cramming matters is the
10 companies, when the LECs and the aggregators do something
11 to suspend the billing practice, they often recreate
12 their name as Betsy was suggesting. And in the
13 Saferstein case, the company actually contracted with two
14 other companies and moved its traffic to these two other
15 companies so that it could continue to bill through the
16 LECs and the third-party aggregators without their
17 knowledge.

18 MR. DEITCH: Sir?

19 MR. MENJIVAR: Roberto Menjivar, FTC Chicago.
20 As more consumers switch to mobile devices or wireless
21 devices, are the states seeing an increase in complaints
22 related to unauthorized charges to a consumer's wireless
23 device and how are those complaints being handled? I
24 think Iowa mentioned that they have a separate division
25 that deals with wireless.

1 MS. BUNGO: Can you repeat the question for the
2 record?

3 MR. MENJIVAR: This is Roberto Menjivar, FTC
4 Chicago. My question is directed for the states. As
5 more consumers switch to wireless devices and mobile
6 devices, are your offices seeing an increase in
7 complaints related to unauthorized charges to a
8 consumer's wireless devices and how are those complaints
9 being treated?

10 MS. DUSMAN: We have the same scenario in
11 Pennsylvania as Craig does in Iowa in that our Attorney
12 General's Bureau of Consumer Protection deals with any
13 wireless complaints, so they don't really come to us, but
14 I think that the same -- one of the same things that's
15 available to wireless customers is to ask that such
16 charges be blocked.

17 MR. DEITCH: Any other questions? Yes, sir?

18 MR. BREYAULT: Hi, I'm John Breyault with the
19 National Consumers League here in Washington. A question
20 for the panel but particular to Illinois AT&T filed
21 comments prior to this (inaudible) for this workshop that
22 laid out a pretty significant verification process that
23 they used to try and work with aggregators and third-
24 party billers, the third-party certifiers that use the
25 aggregators.

1 In your experience in prosecuting these
2 cramming cases, did you find that AT&T or other
3 (inaudible) carriers with (inaudible) similar
4 verification programs, that those were
5 effective or what was your experience in how
6 they used those systems without cramming?

7 MS. BLACKSTON: Well, I kind of talked in my
8 comments about what we've seen from the aggregator end of
9 things. And our experience has been that they -- they
10 request and obtain certain information before agreeing to
11 provide billing services for a customer.

12 But as I also mentioned, we found things that
13 didn't match up like the actual product that was being
14 billed for didn't match at all the text phrase that was
15 showing up on consumers' phone bills. We would, whenever
16 we filed a lawsuit, sometimes we would send a copy of the
17 lawsuit to the aggregator and say, by the way, this is
18 one of your customers. I don't know -- I don't have a
19 sense for when in the process, if at all, it was picked
20 up that a particular vendor was a problem vendor, so . .
21 .

22 MR. DEITCH: And to better answer your
23 question, we have panel two coming up next. Thank you
24 for the transition. It will be what steps does a
25 telephone billing industry take to detect, monitor, and

1 prevent cramming. So, with that, we can take a 15-minute
2 break. Thank you.

3 (Applause).

4 MR. DEITCH: Thank you, panelists.

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1 oversight and strategy for third-party billing, including
2 the development and implementation of anti-cramming
3 safeguards.

4 After Kent gives his presentation, we'll hear
5 from Don Teague. Don is the CEO and Founder for MORE
6 International, an eCommerce consulting firm for the
7 digital content and eCommerce markets. Prior to founding
8 MORE International, Don held the position of Executive
9 Vice President of Marketing and Sales and was the
10 cofounder for PaymentOne, a payment service provider.

11 Previously, he cofounded and held the position
12 of Vice President of Sales and Marketing for UptimeOne,
13 an eCommerce application service provider. Mr. Teague
14 attended San Jose State University, studying business and
15 human performance.

16 This is also a side note. Don was also a
17 professional football player. He signed with the San
18 Francisco 49ers of the NFL and the Glasgow Lions of the
19 WFL. So, I'm pleased that he added that extra bit about
20 him. We look forward to hearing Don's comments, as well.

21 We have three representatives from the law
22 enforcement side, beginning with John McGlamery. John is
23 a Senior Deputy Attorney General for the Bureau of
24 Consumer Protection in the Consumer Advocate's Office in
25 Nevada. His primary duties involve the prosecution of

1 deceptive trade violations, but he assists in utility-
2 related actions on behalf of the Consumer Advocate.

3 John graduated from California State University
4 Sacramento, with a degree in Government, Criminal
5 Justice, and Business Administration before attending and
6 graduating from the University of the Pacific McGeorge
7 School of Law. After being admitted to the Nevada Bar,
8 John also served as a criminal prosecutor for the Reno
9 City Attorney, and he was Department Counsel for the
10 Nevada Department of Industrial Relations, which
11 regulates mine safety, enforces OSHA violations, and
12 regulates industrial insurance providers. A wonderful
13 career, it seems.

14 MR. MCGLAMERY: A little bit of everything.

15 MS. BUNGO: Next we also have Rich Goldberg
16 with us. Rich Goldberg is an Assistant Director of the
17 U.S. Department of Justice, Office of Consumer Protection
18 Litigation. Rich, for the past 11 years, has prosecuted
19 cases on behalf of each of OCPL's client agencies,
20 including the FTC, Food and Drug Administration, Consumer
21 Product Safety Commission, the National Highway
22 Transportation Safety Administration.

23 Rich's cases have included criminal cramming
24 matters prosecuted in the United States District Court
25 for the Southern District of Florida. And in December

1 2006, Rich was awarded the FTC's Criminal Liaison Unit
2 Award for cooperation with the FTC in the enforcement of
3 criminal laws. Rich received his B.A. *cum laude* from
4 Hobart College and J.D. with honors from the University
5 of Maryland School of Law.

6 And finally we have Laura Kim. Laura is the
7 Assistant Director in the Division of Marketing Practices
8 in the FTC's Bureau of Consumer Protection. Prior to
9 becoming an Assistant Director, Laura served as an
10 attorney advisor to the Chairman and Commissioner William
11 Kovacic.

12 Laura has spent several years as a staff
13 attorney, also in the Division of Marketing Practices,
14 where she focused on litigating consumer protection
15 matters, including a case against a group of vendors and
16 billing aggregators responsible for approximately \$35
17 million in consumer injury.

18 Before coming to the FTC, Laura was an
19 associate at Covington & Burling. She graduated *summa*
20 *cum laude* from Yale College and received her law degree
21 from Harvard Law School.

22 As you can see, we have a great panel here, and
23 we look forward to hearing their comments and then
24 opening up for comments from the audience. I will note
25 that when we get to the comment and question-and-answer

1 portion, if you could hold your question until a mic
2 comes to you and also identify yourselves so it can be,
3 please, put on the record. But with that, I'll turn it
4 over to Kent.

5 MR. WARDIN: Thank you, Larissa.

6 Thank you very much for having me attend today.
7 I'm looking forward to our discussion this morning and
8 hope it's interactive for us. I just wanted to express
9 some of the programs that AT&T has put in place recently
10 as a result of some similar -- can you hear me? Sorry.
11 As a result of some of the similar things that law
12 enforcement has seen over the last couple of years.
13 We'll get started right away here.

14 Things that are in place right now are bill
15 format, it has been in place since 1999. We've
16 established a uniform platform across all 22 states.
17 This has been in place since probably 2007, that we have
18 identical bill format for all our customers. Third-party
19 charges are clearly identified in a separate section of
20 the bill.

21 On the very first page, we have a section of --
22 a summary section of the service providers. This
23 identifies to the consumer any time there's a brand new
24 charge that's appearing. We put an asterisk next to the
25 charge so they're easily identifiable to see anything

1 that's new on the bill.

2 There's a separate bill page later in there for
3 any of the charges that are non-AT&Ts. So, there's a
4 page break for those so it's clearly identifiable with
5 their 800 number, with the website for the consumer to go
6 and contact and have any type of questions.

7 Our policy, effective January 1st, 2010, was an
8 address first policy for consumers. Any time a consumer
9 calls in, that is it, period, adjust, remove it. It gets
10 flagged as a cramming dispute. We do not -- we do not
11 try to validate if it's a cram or not. We mark it as a
12 dispute and we mark it against -- we tally those as part
13 of our metrics that we measure our customers against,
14 okay, third-party billers and the aggregators. Okay?

15 Business that started approximately April 1st,
16 2010, same policy. It's uniform across it. Anybody
17 that's not following this, they're not following AT&T
18 policy. Bill block, third-party bill blocking is offered

1 were four problem areas that we saw so we suspended
2 billing until such -- it's often for reconsideration of
3 these anti-cramming measures that were put in place,
4 proved to be successful. So, right now, at AT&T, none of
5 these four products are billable. And it was certain in
6 the first quarter of 2010 most of those were in effect
7 that way. Okay?

8 All right. Anti-contractual measures that
9 we've adopted and changed in 2010 include customer
10 notified of a service, price, telephone billing before
11 completion of the purchase. Customers must consent to
12 purchase and to be billed on their telephone bill.
12 Potentially misleading types of maryh eg tyat wrodmten

1 Our verification requirements, all
2 transactions, minimum baseline verification requirements
3 for all transactions, some similar to the existing letter
4 of authorization. Third-party verification requirements
5 for regulated telecommunication services. Internet
6 transactions are heightened verification.

7 We require first and last name, billing
8 telephone number, address, including street, city, state,
9 and zip code, confirmation of your legal age to purchase,
10 confirmation of authority to bill on the telephone
11 account, some form of nonpublic information, such as date
12 of birth, last four digits Social Security number, and
13 it's validated by independent provider such as Lexus or
14 Experian. So, who's doing that other valid -- there's
15 another party involved in the validation of the customer
16 versus just the sole provider doing that. Okay?

17 The double opt-in process for internet-based
18 transaction, notice of authorization, verification
19 requirements during the initial sales process. Second
20 opt-in process required after customer has authorized the
21 transaction, customer sent confirmation of product,

1 6 price, and term commitment. Customer ascustomer has autho Tf-5.7 0 T

1 agreed to this product, what this -- what we're trying to
2 do here is eliminate people that just were just trying to
3 get additional information to realize that they made a
4 purchase by hitting the button, thinking that they're
5 going to get incremental information.

6 So, what we wanted to have was a two-page
7 process where here's marketing information about the
8 product service, here's the price, you consent, they did
9 a validation, it comes back and it's a separate page
10 without the marketing material available, bold letters,
11 this is going to be on your telephone bill, here's the
12 price, do you agree. So, it's a double opt-in process.
13 This has been in place effective since 1/1/2011. So, we
14 just put this into place this year.

15 Okay. Self-help website for customer
16 inquiries. Clearinghouse must provide customer self-help
17 website. We print this on the telephone bill with the
18 charge. So, the customer has a question and they don't
19 want to go -- oh, thank you -- if the customer has a
20 question and they don't want to call us, AT&T, or the
21 service provider, they can ask for the adjustment via the
22 website. Okay, so, simplify it, you don't have to get in
23 a call queue. You can go ahead and take care of it
24 there. We also get that data back from the
25 clearinghouses on the utilization of those type of

metrics, also.

1 Typically we'll get a performance review, see how they're
2 doing and give them a couple months to reduce complaints
3 and/or if they cannot, they're terminated from our
4 service.

5 Okay. How do we know if we're effective? We
6 have a third-party, independent, external audit to go and
7 ensure that these new rules are being followed and
8 they're compliant. Okay. So, the performance of every
9 clearinghouse is audited annually. Audits are conducted
10 by a major audit firm with relevant experience in this
11 area. Audit scope determined by AT&T. Scope includes
12 performance of active oversight obligation of the
13 clearinghouse.

14 Complaints with the anti-cramming measures,
15 compliance with the truth-in-billing, and the results
16 that we've seen as a result of these new third-party

1 FTC. And as we get more information as we forward, this
2 is a modified thing.

3 I think we've done a good job, this thing, but
4 I don't think we're finished. We're going to continue to
5 observe. We're going to continue to think of better ways
6 to perform. Okay. I'm completed. Thank you very much.

7 MS. BUNGO: Don, we'll turn it over to you.
8 Don is patched in by telephone. Are you able to hear us,
9 Don?

10 MR. TEAGUE: Yes, I am. Thank you very much.

11 So, again, thank you for having me. To repeat,
12 I'm Don Teague, the CEO for MORE International. We're a
13 small, back-office software company. We supply outsource
14 CRL billing and reporting services for our clients. We
15 have been in business for six years with a number of
16 clients billing to the phone bill. And prior to starting
17 MORE, I was with one of the LEC processors as the VP of
18 sales.

19 The three major reasons that I really
20 volunteered to be involved here was that, number one,
21 consumers need to be protected with standardized and
22 proven validation and authentication. The true cramming
23 needs to be addressed. That sounds like the FTC is
24 serious about addressing it, which is perfect. A lot has

1 have come together. And I think clearly the industry has
2 struggled to keep up with those changes, and I believe
3 that MORE can assist with creating some standards to
4 test. I don't know that the optimum solution is known
5 here today, but I think that we need to test a few things
6 to get to that silver bullet.

7 Second real point is that LEC billing has a
8 place in the payment's ecosystem, especially for digital
9 goods and services. There's an appropriateness to having
10 digital charges be on a digital bill, and phone companies
11 often have a longstanding relationship and credit history
12 with their consumers.

13 And the third -- the third real reason I joined
14 is that consumers need and want multiple payment options.
15 I've been in eCommerce payment space for over 15 years.
16 I know for a fact that more payment options means more
17 commerce, and in light of today's credit climate now more
18 than ever consumers need payment alternatives in order to
19 conduct commerce.

20 In terms of, you know, things we've done, seen,
21 or can recommend to address the issue, I think the
22 telemarketing one is the easiest probably to address.
23 The telemarketing B2B cramming I think can be resolved by
24 the sheer fact that disk space is so cheap today, I think
25 this was recommended earlier, and I agree, that 100

1 percent of telemarketing calls should be recorded and
2 stored and made available to whatever enforcement agency,
3 phone company, processor wants to see them alone with the
4 third-party is a fair indication. I think that's a slam-
5 dunk for solving the cramming associated with that piece
6 of the industry. I think the real opportunity for
7 improvement is in the cramming associated with the online
8 -- online sign-ups and online registrations.

9 MORE has a little bit of experience here. We
10 spent a number of months handling some validation and
11 authentication for our clients. Now, this was prior to
12 the phone companies -- I think it was probably six-plus
13 months ago -- that the phone companies demanded that the
14 processors start to handle the validation and
15 authentication.

16 But we handled it for our clients for a number
17 of months, and we used name, address, phone number, and
18 date of birth. And we triangulated this data to create a
19 confidence for that this person was who they say they
20 were. And we encouraged our clients to leverage this
21 system, though at the time it was not required by the
22 LECs or the processors because we felt that the current
23 standards were not stringent enough.

24 I think that AT&T certainly has stepped up to
25 that. I think what we need now is a set of standards

1 that is ubiquitous across all of the phone companies in
2 order to make this work. Now, whether or not the
3 solution we used back then of name, address, phone
4 number, date of birth is the right one, I think others
5 need to be tested.

6 And some suggestions there would be that we
7 might also test something like having the consumer make a
8 call from the phone number that they're wishing to bill
9 to to -- to ensure that they want to, in fact, establish
10 that transaction. The name, address, phone number might
11 extend to date of birth or Social Security number or some
12 other out-of-the-wallet question.

13 And maybe even a more kind of grandiose
14 solution would be the creation of a wallet, where
15 sometime where a one-time stringent process may include
16 all of the above and something else we haven't thought of
17 yet or tested be used to create a master phone billing
18 account, something I lobbied for a couple of years ago,
19 and then use a new user name and password to allow the
20 consumer to bill to their phone bill if that's what they
21 choose to do, maybe something similar to what you see in
22 PayPal or other stringent sign-in processes that allow
23 for easier transactions thereafter. I'm looking forward
24 to the discussion. Thank you.

25 MS. BUNGO: Thank you very much for your

1 comments, Don. And we turn over to John McGlamery.
2 John?

3 MR. MCGLAMERY: And, again, my name is John
4 McGlamery, Senior Deputy Attorney General at the Bureau
5 of Consumer Protection, the State of Nevada.

6 I was asked to talk about what the billing
7 industry -- telephone industry is doing to detect,
8 monitor, and prevent. Unfortunately, I can't comment on
9 that other than to tell you what the problem is and how
10 sometimes those steps are not all that effective because
11 the scammers are becoming very good at going around
12 those.

13 And, basically, what I want to discuss are
14 three different outfits that we know did this. What they
15 did is they had basically your long distance, your
16 voicemail, your e-mail, products that there's a huge
17 demand for, to pay \$20 a month for these days. And they
18 set up different companies. They set up 30 different
19 companies. On the long distance alone there were 14
20 different companies. On the voicemail, there were, I
21 think, five or six; on the e-mail, there were five or
22 six; on the directories, there were five or six, too.

23 And each of these corporations was set up in
24 Nevada, which is unfortunately the haven for every scam
25 that came along because our good legislature doesn't

1 require much of anything to set up a corporation. In
2 fact, you don't even have to identify the true people
3 involved. You can set up proxies.

4 So, what they did is, this case, set up all
5 these different entities as corporations. And each of
6 the persons that was supposedly the owner had absolutely
7 no background in the Telecom industry. Most were real
8 estate agents and teachers and when we asked them, you
9 know, why were you involved in this, they said, oh, it
10 just sounded like a good deal, you know, we didn't have
11 to do any work and we were getting a \$5,000 check each
12 month. So, it was basically a shell game.

13 And we talk about the threshold, and we talk
14 about those verification processes and all. What's
15 interesting about these companies is that they all
16 provided exactly the same service for exactly the same
17 price. The only difference was the name of the company.

18 And why would they do that? Well, when we
19 started investigating these, we found that they were
20 intentionally looking at the threshold processes from the
21 LECs. And they would start billing for company number
22 one until the threshold was met. And then they would
23 rotate to number two until the threshold was met. And
24 then they'd rotate to number three until the threshold
25 was met.

1 We don't know how many dollars we're talking
2 about nationally, but we know that in Nevada, which is
3 one of the smaller states, we had \$600,000 in bills for a
4 period of eight months. That's an awful lot for a small
5 state. And not one of the people we've contacted had any
6 idea what they were getting.

7 So, the verification process alone is not
8 sufficient. The scammers already know how to get around
9 it. And like I say is I know at least three different
10 organizations, one in Minnesota, one in California, and
11 one in Florida, that did exactly this. They worked a
12 system to get around the verification processes and all.
13 And if you heard my comment earlier, when we got the
14 verifications, the data that was in them was obviously
15 downloaded from a list. They just didn't even bother to
16 telemarket or market at all. Although we do know they
17 were using surveys in some of it, but we think that they
18 just got a list and then started billing off that list.

19 So, the verification processes up until about a
20 year, year and a half ago, are simply not sufficient.
21 There's got to be something more. We -- I'm a big
22 advocate that they should just do away with third-party
23 billing through the LECs. I mean, it was intended years
24 ago when the first Ma Bell broke up to allow these
25 companies that were providing these other services to get

1 onboard. Today, it is just nothing but a haven for
2 scammers. And I have yet to see any evidence that third-
3 party billing through the LEC billing is needed, except
4 for scammers who are making off with all kinds of money
5 on this thing.

6 A couple of things that Nevada unfortunately
7 does not have good laws on the civil side. I can
8 prosecute civilly or criminally. A thousand-dollar fine
9 for a violation is simply not enough to be a deterrent.
10 However, good legislature in adopting some other remedies
11 gave us a golden one, and I think since then it's really
12 been effective because we've really seen cramming drop,
13 and that is criminal racketeering. We now have a new
14 criminal racketeering law which says that if you engage
15 in fraud of two or more people where the amount taken is
16 more than \$650, we can file felony and criminal
17 racketeering charges, which allows for seizure and all
18 the other nice, nifty remedies for that.

19 So, we're looking forward -- I haven't had any
20 chance to use it yet, but we're looking forward to it,
21 because if we see another one, we have a nice criminal
22 racketeering charge to bring forth. You know, these are
23 the kind of things, tough remedies, make it -- another
24 thing is they try to do all of their business over the
25 internet. By Nevada law, you're supposed to have a

1 written confirmation notice sent to the consumer at his
2 address. In none of these cases did they do that. They
3 say, well, we just sent it to the e-mail. Well, what's
4 their e-mail? And it's completely wrong. There's no
5 contact with the consumer whatsoever.

6 One of the problems with the LECs that we've
7 seen, and it's still a problem, they've got to give a
8 refund, but only for one month. Turns out to be this
9 person's maybe been billed for several months. So,
10 that's another problem with the -- that the industry
11 needs to take a look at as far as these scammers, because
12 the industry is making money on it. They're not doing
13 this for free. They're making money on it, so there's
14 this incentive not to take the necessary steps. They
15 need to do more to protect the consumer.

16 The last thing is, and I don't know how many
17 people have seen a bill for a third-party billing -- if
18 it comes through an aggregator -- billing aggregator
19 bills, but that's what they are. There's no information
20 on them. If -- at most, you might see Inc21.com. What
21 the heck is that? They don't -- there's no address,
22 there's no phone numbers, there's no nothing. And the
23 phone numbers usually go to the billing aggregators.
24 They don't go to the companies themselves.

25 So, we get the complaints, we have to do a

1 tremendous amount of time investigating who these people
2 really are. The LECs, the local exchange carrier, you
3 know what I'm talking about, don't you? The local phone
4 companies? Really need to do more to get the
5 information, have that information available to the
6 consumer so the consumer knows who the real party is
7 billing them, instead of just force -- basically playing
8 this shell game like we saw setting up all these
9 different corporations.

10 Have I got any time left, or are we still
11 going?

12 MS. BUNGO: You do.

13 MR. MCGLAMERY: I do, okay. So, anyway, we
14 would like to see no billing through the LECs. I mean,
15 it just doesn't make any sense anymore in this day and
16 age. Same thing with the wireless. If you want your
17 dial tones, you know, unless -- unless you opt in with a
18 written opt-in, that way you preserve the ability to do
19 those things, but you're getting around this shell game,
20 you're getting away from the ability to just grab a
21 telemarketing list and just start billing people. You
22 get around those things by having something that's
23 independent.

24 And what we found is that the reason that these
25 scammers avoid the mails is simply because they don't

1 want to be charged with mail fraud. So, they don't do
2 anything by mail. Make them go through the mails. That
3 also identifies where they're located. It also
4 identifies -- gives providing information to the
5 consumers so that they have some idea of what's going on.
6 And if the consumer truly has purchased this, they're
7 going to sign off on it. But I would suggest that these
8 industries will go out of business simply because there
9 really is no demand, there's no market. It's all one
10 giant shell game. It's all one giant fraud. Thank you
11 very much.

12 **(Applause).**

13 MS. BUNGO: We'll hear from Rich next.

14 MR. GOLDBERG: Good morning. I love working
15 with the FTC, but they always put me on right before
16 lunch, which is difficult with everybody's stomachs
17 growling, but I'll try and keep it interesting.

18 My name is Rich Goldberg. I'm an Assistant
19 Director with the Office of Consumer Protection
20 Litigation of the Department of Justice here in
21 Washington, DC. We do all kinds of consumer fraud cases.
22 We do civil cases; we do criminal cases. And as of 2009,
23 mid 2009, I had never heard of cramming before, until I
24 talked to the FTC's criminal liaison division, which does
25 an excellent job of referring criminal cases to U.S.

1 Attorney's Offices and to our office, as well.

2 And I was told of a case in the Southern
3 District of Florida that the FTC had brought in which it
4 was clear that the individual had acted with an intent to
5 defraud. And we, again, we get a lot of referrals from
6 the FTC, and generally speaking, there is a pretty
7 significant amount of work that we need to put into the
8 cases over and above what the FTC puts in on theirs. But
9 I was told that this was pretty much a slam-dunk.

10 And after speaking with the attorneys who did a
11 great job on the civil case, I was convinced that my
12 nine-year-old daughter could have brought this
13 prosecution. This was an individual, Willoughby Farr,
14 who had operated a \$35 million cramming scam from prison.
15 He had been in the West Palm Beach County Jail and had
16 billed hundreds of thousands of people's telephone bills,
17 while sitting in jail.

18 And the FTC had brought a case and had seized a
19 lot of the assets that he never got to enjoy because he
20 was in jail. But they include mansions, two huge
21 mansions in south Florida. They included a lot of
22 different kinds of very fancy cars. I'm not a car guy,
23 but if you are, you'd be very impressed with the cars
24 that he got. He got yachts. Again, none of this was he
25 able to take advantage of because he was waiting to get

1 to commit fraud while in jail on our charges. And that
2 was in 2010 that he was engaged in that conduct.

3 So, this isn't back in 2006. This isn't back
4 in 2005 that this conduct was stretching through. It was
5 stretching through 2010. And, so, what is being done is
6 clearly not enough. If somebody can, from a jail cell,
7 have other people operate on their own behalf to submit
8 bills for completely fraudulent charges, as smart as
9 people can be to try and figure out ways to increase
10 verification and increase the role of individuals

1 to me. I've actually been crammed. I just got a bill
2 with a \$65 charge that I never -- I never authorized.
3 How can this be happening?

4 **(Laughter).**

5 MS. KIM: So, the question I have for all of
6 you today is if a cramming defendant can't avoid being
7 crammed, who can? And I think we all have come today to
8 try to put our heads together and figure out what more
9 can be done. And I think everything that we heard at
10 panel one and prior to now confirms there is more that we
11 can do and there is more that we really have to do to try
12 to stop this problem.

13 So, I want to offer a couple of thoughts that
14 obviously the disclaimer that these are my own thoughts,
15 they're not those of the Commission or any -- not those
16 of the Commission or any commissioner, but a couple of
17 thoughts about what more could be done based on the
18 particular role that aggregators play on the one hand and
19 that the phone companies play on the other hand.

20 Turning first to the aggregators, there are two
21 specific roles that the aggregators play that I think
22 make them well positioned to be doing more to stop
23 cramming. And the first is that the aggregator is the
24 gatekeeper charged with responsibility for screening out
25 the bad actors. As we all know, it's the aggregator who

1 has a direct contract with the vendor. And the LECs, not
2 being in a direct contract with the vendors, rely on the
3 aggregators to screen out bad actors.

4 But as we've heard today, is this screening
5 process really enough? You know, Willoughby Farr, who
6 was in prison, was able to get front people to help him
7 pull off this business. Even after he'd been prosecuted
8 by the FTC, he was able to find yet another person. And
9 we couldn't connect those dots? Not after a \$35 million
10 scam had been criminally prosecuted?

11 Of course the aggregators require vendors to
12 fill out forms that indicate who their principals are,
13 whether they've been terminated by another LEC or
14 aggregator. But what does that aggregator do to
15 independently verify that information? We know this
16 platform is being used to perpetrate fraud. Are we just
17 believing what the vendors say on the application, or are
18 we actually taking independent steps to verify that that
19 information is true?

20 Are we asking questions? Are the aggregators
21 asking questions about whether the information on the
22 application form points to connections with terminated
23 companies? We know time and again we see vendors

1 officer. But they might be using the same customer
2 service number. They might be using the same customer
3 service vendor. They might be using the same P.O. box.
4 These are all things that can point to connections with
5 terminated companies, and you have to ask, are the
6 aggregators doing enough to draw those links.

7 Second thing with respect to aggregators is the

1 So, even if the number of cramming complaints
2 that a LEC receives might be small, it's hardly
3 surprising given the vast number of consumers who may not
4 even know that they're being billed at all. And, so, as
5 the entity in direct contact with the consumers, I ask
6 whether the LECs can do more to ensure that consumers
7 know to look at their bills and examine them for cram
8 charges. And, similarly, the LECs are the ones in the
9 best position to be able to educate their consumers that
10 the option of third-party bill blocking is available.

11 Second, the LECs have to hold the aggregators
12 accountable for allowing fraudulent actors to access
13 their bills. And I'm encouraged to hear about steps like
14 auditing the aggregators and holding them responsible.
15 I'm curious whether that's something that is industry-
16 wide. What are the LECs doing to ensure that the
17 aggregators who let Inc21 happen, who let Nationwide
18 Connections happen, who let, you know, Mercury Marketing
19 and Saferstein happen, what are the LECs doing to hold
20 these aggregators accountable? Or are they doing repeat
21 business with the same aggregators?

22 And, third, what are the LECs doing to share
23 information that they already have with their counterpart
24 LECs, to ensure that terminated vendors are not
25 reincarnating and regaining access to the billing

1 platform under a different name? Nationwide with
2 Willoughby Farr, he had actually been terminated with the
3 prior incarnations of companies that he had before
4 Nationwide. So, again, what are the things that the
5 phone companies can do to share information with their
6 counterparts to make sure that this does not happen
7 again? Thank you.

8 MS. BUNGO: We are going to open up to question
9 and answer and comment. If you have a question, if you'd
10 raise your hand and wait for the mic to come to you and
11 please identify yourself for the record.

12 MR. DAVIS: Hi, I'm Tom Davis, and I'm a
13 citizen, a senior citizen, who's been crammed five times.
14 And I'd just like to ask this group if it's appropriate
15 to talk about John's idea about eliminating billing --
16 third-party billing.

17 MS. BUNGO: You're curious as to others'
18 perspective on the panel? Is that your question?

19 MR. DAVIS: I think it's an excellent idea, and
20 I'd just like to hear what the negative is. What's the
21 downside of third -- of eliminating third-party billing?

22 MS. BUNGO: I might ask if the industry
23 representatives would like to speak to this? Kent or
24 Don? Are there forms of legitimate third-party billing
25 is the other way of asking this question, and what would

1 be the example.

2 MR. WARDIN: Yeah, I think there's --

3 MR. TEAGUE: This is Don Teague. There are a
4 number of name-brand large companies using phone billing
5 as a payment option, and I know that there's a number of
6 other brands that have been interested in getting into
7 this space, but because of those sort of, I think, lack
8 of oversight coming up with standards specifically for
9 the internet sign-ups, I think there's many waiting on
10 the sidelines. I mean, there's some name brands out
11 there like AOL and lizard games who are effectively using
12 billing to the phone bill today.

13 And I think, you know, as I said earlier,
14 there's a demand for additional payment options beyond
15 credit cards, especially in light of what's going on in
16 the credit industry, banking industry today. So,
17 certainly, I guess it's an option that LEC billing be
18 thrown out, but I think also one needs to look at what
19 the potential, you know, impact is.

20 MS. BUNGO: Thank you, Don.

21 Kent, would you like to offer your comment?

22 MR. WARDIN: Yeah, I was going to echo that
23 identical type of comment, that there are quality third-
24 party services that are offered. We're here, you know,
25 for myself, if a customer does get crammed and because I

1 have a lot more to lose with respect to the services that
2 AT&T offers in the vertical and the substitution, so it
3 does not do me any good to try to promote any of this
4 type of activity. I mean, it's clearly not in AT&T's
5 interest. But, yes, we do believe that this is an option
6 that's available to consumers that is -- that's wanted by
7 them.

8 MS. BUNGO: Thank you, Kent. Are there other
9 questions in the audience? We have one in the corner.

10 MR. BREYAULT: Thank you, John Breyault with
11 the National Consumers League again. Question for Mr.
12 Wardin: In your comments that you filed, you mentioned
13 that the system -- the verification and authentication
14 system that you described in your oral remarks had
15 limited cramming complaints to less than .2 percent of
16 all bills that include a third-party charge. Do you have
17 data on how that compares to the number of complaints you
18 received about cramming prior to the implementation of
19 this system?

20 MR. WARDIN: Yes. I've seen approximately the
21 same similar thing, about a 70 percent reduction. So,
22 all those data elements have been tracking very closely,
23 meaning number of third-party billing calls coming in to
24 our centers, number of cramming complaints, number of
25 escalating complaints, and then the percentage I'm

1 actually at .14 for March, so it's even going down lower
2 as we -- as we've been going along here.

3 MR. BREYAULT: Thank you.

4 MR. WARDIN: Yep.

5 MS. BUNGO: Is there another question in the

improvement plan is being and how effective that is,

1 printed on the bill, the telephone bill, in the section
2 where the charges -- right below where that charge
3 appears. So, it's -- they're kind of sorted together.
4 It's a text message that gets sorted with that, so it's
5 readily available for the consumer associated with that
6 charge.

7 MS. DUSMAN: Also, does that apply to both
8 wired line and wireless billing?

9 MR. WARDIN: No, this is -- I've been speaking
10 wire line today. Okay.

11 MS. DUSMAN: So, you don't have any such device
12 for wireless billing?

13 MR. WARDIN: With respect for the customers to
14 call in and get adjustments?

15 MS. DUSMAN: Correct.

16 MR. WARDIN: They would call in to the AT&T
17 service center to get all those adjustments. They would
18 not call the provider of the service.

19 MS. DUSMAN: Thank you.

20 MR. WARDIN: That's how the wireless side is.

21 MS. BUNGO: We have another question pending.

22 Hi, my name is Bob Schoshinski, I'm an attorney
23 here at the FTC, and I have a question about the
24 verification of consumer authorization system that a
25 couple of the panelists were talking about today and want

1 to frame it in regards to a personal experience I had
2 with cramming. A couple months ago, my wife and I were
3 looking at our phone bill and noticed a couple of monthly
4 third-party charges on the bill that we didn't recognize.
5 And, so, we confirmed that we hadn't ordered anything
6 like that, called the local telephone company.

7 They were very, very good. They took the
8 charge off immediately, offered a block, et cetera. But
9 having worked in cramming cases in the past, I was
10 interested to know how did they say that I had authorized
11 this charge. So, I called the 800 number on the bill and
12 spoke to the aggregator who then forwarded me to the
13 purported merchant and talked to them.

14 And I asked them, you know, well, how do you
15 know that I authorized this charge. And they said, well,
16 somebody called and we have your name, and they gave me
17 my name; your telephone number, they gave me my accurate
18 telephone number; your address, they gave me my accurate
19 address; and your birth date, and they gave me the
20 correct birth year but an inaccurate birth date.

21 And upon having that information, what that
22 told me is that someone, as John McGlamery had indicated,
23 had accessed a data base of some sort and populated these
24 sorts of fields with this information. So, the question
25 is how does, you know, requiring that information ensure

1 stretch it out whereby it's a one-time sign-up process
2 and we end up with a phone bill law.

3 MR. GOLDBERG: This is Rich Goldberg. I just
4 wanted to comment on that. The problem is that that
5 assumes that somebody is reviewing the data and verifying
6 it. There's nothing -- as Bob pointed out -- there's
7 nothing that would prevent firms from putting in data,
8 sometimes false, sometimes correct. And it's assuming
9 that somebody's going to verify it. We've had instances,
10 some cases that have been discussed, where there are
11 phony verifications being taped. And somebody ultimately
12 says, that's not me on the phone providing that
13 authorization.

14 So, assuming the fraudsters are going to put in
15 data, sometimes correct, sometimes incorrect, sometimes
16 correct verifications, sometimes incorrect verifications,
17 it takes somebody seeing a cramming charge, and then
18 going and having that charge taken off for anything to
19 happen as a result. So, how does that solution of having
20 taped verification prevent cramming from happening in the
21 first place?

22 MR. TEAGUE: It's a good point. And
23 potentially the industry needs to look at doing something
24 similar to what was done back in the day to solve or
25 identifying the phone numbers and how they were -- and

1 which phone companies owned a relationship with them -- I
2 think that innovation is called LIDB or line item data
3 base, and all of the phone companies were at one point
4 and I think they continue to be mandated to participate
5 in it so that we know what phone number that was, that
6 the consumers associated with which phone company.
7 Potentially an industry solution with some oversight by
8 some sort of a government sort of entity whereby, you
9 know, whereby that stuff can be checked.

10 MS. BUNGO: I think Kent would like to make a
11 comment.

12 MR. WARDIN: Yeah, the only thing that I would
13 like to comment is that he did say it was the wrong birth
14 date, and today we have an external third-party
15 requirement to validate that type of information. So,
16 that was probably done by not like an Experian or a Lexus
17 that's a valid third-party, you know, person to validate
18 that type of data.

19 MS. BUNGO: Thank you.

20 MR. TEAGUE: I apologize, I missed that point.
21 In the system that we ran for a few months, name,
22 address, phone number, and date of birth, you know, we
23 strongly encouraged it all to match, even though it
24 wasn't a requirement.

25 MR. WARDIN: Right.

1 MR. TEAGUE: Of the time, just because, again,
2 I think that the industry of the internet and LEC billing
3 are struggling to come together and make it happen.

4 MR. WARDIN: Right, right, and that's why we
5 preferred to have an independent party do that validation
6 versus the same party making the sale.

7 MR. KERBER: In addition -- this is Mark Kerber
8 from AT&T. AT&T's current contractual requirements would
9 not regard date of birth as a valid form of final
10 verification because that's easily available on a lot of
11 public data bases. It has to be so called nonpublic
12 information, last four Social, we have a couple of other
13 things that we allow.

14 And then as Kent mentioned, it has to go out
15 and be verified by somebody who is qualified and
16 independent, like Lexus/Nexus or Experian. That's still
17 not going to be perfect. It's still not going to be
18 bulletproof, but we tried to create a system where
19 somebody couldn't just go to some kind of a publicly
20 available data base, get your publicly available
21 information, stuff like DOB that does show up on all
22 kinds of places, and just populate forms.

23 MR. MCGLAMERY: I have a question for the
24 industry people. Tell me what the downside is for
25 requiring opt-in and written verification between the LEC

1 advocate a requirement of recording an entire
2 telemarketing transaction, because it is cheap to do now
3 and since 2003, the FTC rejected the argument and amended
4 the Telemarketing Sales Rule to say that it was too
5 expensive to maintain recordings, because, as we all
6 know, you can record literally and maintain hundreds of
7 thousands of digital recordings on a device that's no
8 bigger than your thumb.

9 But on the issue of data and your personal
10 information that's out there and available, it seems to
11 me that there is just simply too many opportunities out
12 in the ethosphere to grab consumers' personnel
13 information, to use it to populate false letters of
14 authentication or to say that this is the verification of
15 something that you've ordered, as my colleague, Mr.
16 Schoshinski mentioned happened to him personally.

17 But sometimes the information in there is going
18 to be your actual birth date, because I know that I
19 filled out forms before where I've put in my birth date
20 and I've put in my Social Security number, and I've put
21 in my mother's maiden name. All that information is out
22 there somewhere for somebody to buy and to use and to say
23 that I or someone else authenticated a charge using this
24 personal information.

25 How about monitoring the actual usage of the

1 product or service being billed for and asking for
2 authenticated, technically sound evidence that the
3 consumer is actually using what they're billed for? And
4 that is if you can even get past the premise that the
5 consumer Mr. Davis mentioned, is this required at all.

6 And that brings me to my next comment. Given
7 the prevalence of consumer complaints which are now no
8 longer anecdotal, we saw them in Inc21, they have been
9 validated by a court. We've seen them in numerous other
10 law enforcement investigations that have been mentioned
11 here, that consumers overall are still unaware that
12 third-parties can bill them on their phone bills.

13 If you can get past the premise that consumers
14 want this at all, it seems to me to be a flawed
15 monitoring premise to monitor the number of complaints
16 you receive per month, and it's certainly flawed to
17 monitor the number or percentage of complaints you
18 receive versus bills rendered, because consumers simply
19 don't know that this can happen. And, yes, this billing
20 has been permitted for over 15 years now, but we still
21 get complaints on a weekly basis where people say I
22 didn't know this was legal.

23 And then the final point related to that is
24 that customer service departments for telephone companies
25 and billing aggregators and merchants' customer service

1 departments are continuing to tell consumers that
2 allowing third-party billing is required by the
3 government. Maybe somebody here can enlighten me on how
4 that is true, because it seems to me to be a false
5 statement and it's still being made today.

6 MS. BUNGO: Thank you, Doug. I'll offer an
7 opportunity to respond from anyone in the industry.

8 Don, do you have any parting, final comments?

9 MR. TEAGUE: No.

10 MS. BUNGO: No? All right, thank you.

11 MR. KERBER: I can actually catch just the last
12 question. Third-party billing was required beginning in
13 1984 by Judge Greene's consent decree for the RBOCs. Any
14 RBOC that was going to bill long distance or information
15 services on behalf of AT&T had to do so on an equal
16 access basis for any other providers. That was everybody
17 at the time because at the time of divestiture, AT&T had
18 no organic billing capability.

19 So, at least for the bread-and-butter
20 telecommunications and information services that was a
21 requirement. That's no longer true at least for my
22 company, for AT&T. I think it's probably also not true
23 for the others. But that has been a relatively recent
24 development. Essentially, we were freed of that
25 obligation with 272 relief, which for the SBC companies

1 was November of 2007.

2 And, so, we did, in fact, you know, have
3 information in our methods and procedures that our
4 service reps would use at one time that would, you know,
5 if somebody said why is this on my bill, they would say,
6 well, you know, we're required to bill for other long
7 distance companies or something like that.

8 Those methods and procedures have all been
9 modified, at least -- again at the AT&T companies. It's
10 certainly possible that some of the old service
11 representatives that have been with the company for, you
12 know, 25 years, which is basically, you know, how far
13 we're looking at, are -- yeah, you know, these people,
14 you know, that the things they've said for 25 years,
15 probably some of those reps it's pretty deeply ingrained
16 and they haven't been fully retrained yet, but we did
17 change those methods and procedures. We've trained
18 multiple times on the new methods and procedures. So,
19 hopefully, we don't have any or realistically, probably,
if that elain procedures have been't have very many et, bumbhe01 been

1 Thank you very much.

2 **(Applause)**.

3 MS. BUNGO: And we are on lunch break to come
4 back at, let's see, looks like 1:30. We'll see you at
5 1:30. Was there any other announcement, Shameka? Thank
6 you very much.

7 **(Lunch Recess)**.

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1 applicable to payment methods still developing on
2 wireless phones."

1 And, finally, we have Jim Manis, who is the
2 Chairman and CEO of the Mobile Giving Foundation. He is
3 responsible for the first use of mobile giving in
4 response to relief efforts in the Asian tsunami and
5 Katrina relief efforts when he was the Senior Vice
6 President of m-Qube, which is a mobile billing
7 aggregator. He also -- he founded the Mobile Giving
8 Foundation and also leads the consulting firm 1024
9 Wireless Services, which provides strategic direction for
10 clients in the mobile space.

11 And with particular relevance to this panel,
12 Jim was very involved in the Mobile Marketing
13 Association's development of their guidelines concerning
14 third-party billing.

15 And, so, without further ado, I'm going to turn
16 it over to Glenn for his initial remarks.

17 MR. REYNOLDS: Thanks, Bob, for having us here
18 today. U.S. Telecom, for those of you who are not
19 familiar with us, is the trade association for a large

1 Frontier, FairPoint, that are -- tend to be spread around
2 the country and tend to have more properties in rural
3 areas. And then we represent many, many very small
4 companies throughout the country focused in rural areas,
5 many of which have a couple thousand or even just a
6 couple hundred customers and lines.

7 And I say that at the outset because I think
8 it's important that when we're thinking about the causes
9 and potential solutions for cramming that it would be a
10 mistake to assume that the same steps will be equally
11 effective for all companies. Not only do the companies
12 have very different systems, but they also operate in
13 very different customer environments. Many of these in
14 very small towns in which they basically know all of
15 their customers.

16 My previous experience with cramming is from a
17 very different perspective. As Bob mentioned, I
18 previously worked at the FCC and, in fact, in 1998, I was
19 one of the managers in the Common Carrier Bureau's
20 Enforcement Division when cramming sort of blossomed as
21 in the number of consumer complaints we were seeing at
22 the Commission.

23 At that time, then FCC Chairman Bill Kennard
24 responded by calling the ILEC community together to see
25 if they could identify practices that would work to deter

1 unauthorized charges from appearing on customer bills.
2 While the FCC held open a threat that -- of taking a much
3 more regulatory approach at that time, a more industry-
4 driven answer was viewed as preferable for at least three
5 different reasons.

6 The first was that we felt that the industry
7 could help identify and, in fact, implement responses to
8 cramming, much faster than the Commission could in a
9 rule-making proceeding. Second, it was apparent that the
10 ILECs had a self-interest in taking steps to deter
11 cramming, both because of the cost of handling these
12 complaints and because of the risk of ultimately losing
13 the consumer if that consumer was unhappy with the
14 service.

15 And, third, there was a recognition that from a
16 public policy perspective there were, indeed, some
17 consumer benefits from ILEC -- from LEC third-party
18 billing, both in consumer convenience and in providing a
19 convenient billing option for companies that were
20 offering services that were in competition to or might be
21 in competition to services that were being offered by the
22 ILEC.

23 So, such third-party services as long distance,
24 pay-per-call, conference calling, and prison pay phone
25 services were typically viewed by consumers as a natural

1 complement to their local service, with a convenience and
2 competition policy benefits from appearing on the
3 customer's local bill. Today, related services might
4 also extend to internet and broadband-related services,
5 where the telephone company is also the consumer's choice
6 of ISP.

7 The result of that ILEC effort begun at the
8 urging of the FCC was the Industry Anti-cramming Best
9 Practices Guidelines, which were developed and released
10 within two months after Chairman Kennard first called the
11 group together. While primarily driven by the ILECs, the
12 final best practices guidelines also included input from
13 the aggregator community and the service provider
14 community and included a number of key elements: pre-
15 acceptance screening of each provider's products,
16 services, and marketing materials; procedures for
17 monitoring complaint levels generated by each provider,
18 along with complaint level targets under which the
19 companies, providers, or aggregators could be terminated;
20 requirements that providers implement appropriate
21 authorization and verification procedures to ensure that
22 consumers have, in fact, knowingly approved charges;
23 assurances that bills received by consumers provide clear
24 and comprehensible information concerning the services
25 being charged and the consumer may question or challenge

1 those charges; establishment of customer dispute
2 resolution procedures; recognition of the need to provide
3 consumers with options for controlling what charges
4 appear on their bill; and commitments to work with
5 appropriate law enforcement and regulatory authorities.

6 The following year, the FCC went on to provide
7 additional guidance in this area in adopting its truth-
8 in-billing order. And in that order, the FCC adopted
9 several principles to ensure that consumers received
10 clear and comprehensive information on their bills,
11 including that consumer phone bills be clearly organized,
12 clearly identify the service provider and highlight new
13 services, that bills contain full and non-misleading
14 description of the charges that appear, and the bills
15 contain clear and conspicuous disclosures of any
16 information that the consumer might need to challenge the
17 charge.

18 I raise these because these two sort of
19 complementary documents, the Anti-cramming Best Practices
20 Guidelines and the Truth-in-Billing Guidelines really
21 form the foundation of what I think all the ILECs that
22 I've spoken to within -- of my member companies are using
23 as sort of the baseline for their -- for preventing
24 cramming charges from appearing on a customer's bill.

25 In this regard, and I think there was some

1 mention of it earlier, but I do want to emphasize where
2 the incentives lie for my member companies. I think in
3 1998, at the time, competition, particularly in the
4 consumer markets, was still in its developmental phase.
5 Today, however, there is no question that ILECs cannot
6 afford not to take steps to protect their customers from
7 unauthorized charges appearing on their bills, because
8 every one of those customers has multiple choices for the
9 provision of services.

10 Just a couple facts. Today, five of the top
11 ten voice providers in this country are cable companies,
12 not long -- not ILECs. And 25 percent and growing of the
13 customers out there have completely cut the cord and are
14 using solely wireless companies as their voice provider.
15 So, an unhappy customer is not going to be a customer of
16 ours for very much longer.

17 While ILECs do make some profit from providing
18 third-party billing, it is a tiny fraction of the
19 revenues they lose when a customer switches to a
20 competitor because he or she believes that the company
21 has failed to adequately protect them from the
22 unauthorized charges or failed to deal with their
23 complaint in an appropriate manner. And this loss
24 doesn't even account for the cost associated with dealing
25 daily with any complaints that arise and the costs

1 imposed on customer service representatives.

2 Every one of my members that I've spoken to in
3 this context gets this and accordingly takes the issue of
4 cramming very seriously. Nonetheless, there is great
5 value to dialogues like this periodically to point out
6 the importance of constantly reexamining whether the
7 steps each company is taking are working and provide a
8 platform through which we can share ideas as to what best
9 practices are most effective.

1022 Oh, I didn't even know there was a clock going.

1 at the front end can be very effective in preventing the
2 crammers from ever getting on the bill in the first
3 place.

4 Aggregator contracts should also require that
5 services provided to utilize acceptable authorization and
6 verification procedures. We've talked a little bit about
7 the verification procedures. Obviously letters of
8 authorization and third-party verification are the
9 standard within the industry, but double-click options
10 are increasingly being used with regard to internet-based
11 transactions and welcome packages can be sort of a
12 similar double-check on -- to confirm that customers
13 have, in fact, ordered the service in other types of
14 transactions.

15 The contract should include cramming complaint
16 thresholds that we've talked about that are applicable
17 both to the individual provider and to the aggregator and
18 that the contract should provide that aggregators be
19 subject to an audit. And this goes to some of the other
20 questions that we have. It's certainly not enough just
21 to have the standards that -- in these contracts, but the
22 aggregator needs to be audited and the service -- and the
23 aggregator needs to be auditing each of the service
24 providers.

25 The second level that I sort of break it off

1 into is efforts at making sure that the customer's bill
2 is as transparent as possible. And obviously a lot of
3 this has to deal with things that are raised in the
4 truth-in-billing guidelines. For example, third-party
5 charges appearing on a separate section of a bill that
6 makes it clear that the customer can challenge those
7 charges without risking losing continuity of service.

8 Also, another important part, I think, was
9 raised earlier was every time a new third-party biller
10 appears on the platform -- on the bill, making sure
11 that's emphasized up front and making sure that the
12 customer has information on how to reach and -- reach
13 that provider.

14 The third level of protection, and I'm going to
15 skim a little, because my time appears to be running
16 quickly.

17 MR. ALTSCHUL: I'll be happy to cede you my
18 time.

19 MR. REYNOLDS: Okay. There's only three of us.

20 And as I also mentioned, the use of welcome
21 packages in which, you know, the company is required to
22 -- the service provider company is prepared -- is
23 required to send approved specific information concerning
24 what the customer is alleged to have ordered.

25 The third level of anti-cramming protection

1 incorporated by the ILECs involves what they do once a
2 customer calls and complains. And I point out that while
3 the companies clearly put information about how to
4 contact the aggregator and/or the service provider, the
5 entity that they call, by and large, is going to be their
6 telephone company if this charge is appearing on their
7 bill. And the standard practice of the member companies
8 that I've spoken to in this regard is to provide a credit
9 to the customer calling to complain about a charge he
10 says he's unaware of or did not authorize, no questions
11 asked.

12 The goal of a first-call approach is to provide
13 the customer with full relief without having to make a
14 call -- another call to the provider. While the customer
15 is on the phone, the customer service rep can take that
16 charge off the bill, it can arrange for all additional
17 future charges to -- from that particular sub-kick to be
18 blocked, and it can go back and review previous bills to
19 ensure that there were not earlier charges that the
20 customer paid without noticing.

21 Most providers also make a point of informing
22 the customer at this time that he or she can place a
23 block on the -- of all third-party charges on his or her
24 bill at no charge.

25 An essential element of cramming prevention,

1 obviously, is the continuous monitoring of cramming

1 over the past year or so and that these upgrades are
2 significantly reducing the number of cramming complaints
3 received by their customer service reps.

4 As the practices are most effective in
5 combating -- as these practices evolve, I think forum
6 like this are important to allow the companies to share
7 what they're learning, which practices are working, which
8 practices are not. That kind of also dovetails with
9 another point that was raised earlier, a question that
10 was raised earlier, which is should companies be doing
11 more to kind of share information about bad actors. I
12 think it's a great idea. I think it's something that
13 should be looked into. I think it's something that
14 clearly needs to also include the aggregator community,
15 since they to some degree have even better insight to a
16 broader range.

17 I would throw a question out there to those of
18 you here from the FTC or DOJ whether there is some
19 antitrust issues related to that, but I think it's
20 something certainly worth pursuing.

21 And the final question that was raised earlier
22 by Laura was the responsibility of the industry to
23 educate consumers about third-party charges, and I think
24 there's no question that the industry has a very
25 significant obligation, certainly responsibility, to make

1 sure that if their customers, if they're providing this
2 service to their customers and they believe that their
3 customers -- that this is a service that is of value to
4 their customers, that they need to be reaching out to
5 ensure that their customers are aware that these charges
6 might appear on their bills.

7 I think partly that is -- and certainly partly
8 the intent of some of the bill design changes that
9 companies have made, but I think this is something that
10 certainly is worth further discussion as to whether there
11 are other ways to make sure that that information gets
12 out. And with that, I'll pass it on.

13 MR. SCHOSHINSKI: Thank you, Glenn. Next we're
14 going to hear from Mike Altschul. And I'm going to get
15 him set up -- get him set up on his slides here.

16 MR. ALTSCHUL: Thank you, Bob.

17 MR. SCHOSHINSKI: There, that works.

18 MR. ALTSCHUL: Well, thank you for inviting me,
19 and I hope all of you aren't too sleepy after lunch. The
20 good news for these presentations is that pretty much all
21 the ground that Glenn covered applies to wireless
22 carriers and then some. For those of you who like
23 aphorisms -- I grew up in a family that loved aphorisms
24 -- sort of the two organizing thoughts I want to use
25 today are trust but verify and carrots and sticks.

1 So, by trust but verify I want to talk about
2 what both individual carriers and CTI as their industry
3 association do to monitor compliance with a set of
4 industry best practices that were established by the
5 Mobile Marketing Association. That's a trade association
6 -- Jim is going to talk who has been very active in their
7 activities over the years -- that developed a set of
8 consumer best practices that should apply to mobile
9 marketing that rides over wireless carriers' networks.

10 And then the carriers themselves, as Glenn
11 described, also monitor on a daily basis all of their
12 calls to their customer care and customer service
13 representatives and can -- and the reason they do it so
14 they can quickly detect any spikes in any particular
15 issue that is causing customers to call customer care.

1 contracts with aggregators and their customers for
2 billing and collection services associated with premium
3 content. And increasingly the individual carriers have
4 adopted a model that rewards those marketers that have a
5 low rate of customer complaints so that if somebody is
6 not generating complaints to customer care, they will
7 receive a larger revenue share from the carrier than from
8 those services that generate more complaints.

9 Additional sticks are actually suspension and
10 not supporting or carrying programs that result in either
11 too many complaints on a carrier's network or don't --
12 are found not to be compliant with the industry best
13 practices. The focus of what the wireless carriers do,
14 just to be clear, is on third-party content. It's called
15 premium messaging oftentimes. It's usually facilitated
16 through short codes, but it can also now be delivered
17 through ads and offers that are imbedded within a
18 wireless application.

19 Those are not true cramming issues because
20 those charges would not be billed on a carrier bill. But
21 if the customer has an account at, for example, the Apple
22 iStore, it would be billed to that account or similar
third-party accounts. There's a -- there are some

1 with how you can use the camera in a smartphone to take a
2 picture of a barcode kind of device, there are multiple

1 a series of consent decrees called AACS for assurance of
2 voluntary compliance that a number of state AGs have
3 entered into with wireless carriers in this area.

4 Now, to be sure, the state AGs in seeking these
5 AACS with the carriers were quick to concede that it's
6 not the carriers who were doing the deceptive marketing
7 but rather people that had contracted with the carriers

1 short address that's used instead of an internet access
2 for sending messages, text messages, from phones to
3 content providers and others.

4 We use that registry to collect information
5 about the intended use and the type of the campaign
6 associated with the short code. So, before an address is
7 assigned for premium messaging or standard rate messaging
8 for that matter, we basically get a profile and
9 representations from the content provider describing the
10 intended use and purpose of their code. This becomes
11 very valuable, of course, for carriers if they do receive
12 any complaints or questions through their customer care
representatives, soTD0 Tc(11)Tj/TT4 1 Tf5.7 omer care

1 monitoring company also subscribes to each and every
2 short code and sends test messages to each code and goes
3 through the key requirements of the best practices, so if
4 they text "help," they want to see if they get a response
5 to the word "help." If they text "stop," they want to
6 see if the subscription or the messaging stops and the
7 like.

8 And, so, that's the verify part of the trust.
9 When -- so, this is talking about how we intercept. I
10 got a little bit ahead of here.

11 And then this last slide, which probably
12 violates every rule of PowerPoint presentations. Way too
13 many words and way too small boxes. It shows the steps
14 if we do detect violations, first of all, we share it
15 with the participating carriers. To Glenn's point, we
16 are guided by the antitrust divisions, business review
17 letters to some credit rating agencies, quite a few years
18 ago, that suggest it is perfectly acceptable and good for
19 consumers under the antitrust laws to share information
20 about consumer practices or bad practices. But we insist
21 that the carriers make their own independent decisions
22 about what to do with any particular program that is
23 found in violation. There's not going to be any
24 discussion or collusion among carriers to support or not
25 support a particular code.

1 For those programs that we do detect
2 violations, we, of course inform them immediately. And
3 depending on the severity, there's a clock of so many
4 hours or so many days to come into compliance with the
5 best practices. At that point, we retest, and if the
6 program is in compliance, the sort of red flag is
7 removed. If it's not, CTIA through NeuStar can use the
8 registry process to deny access to that campaign and
9 those marketers to get additional codes or to renew their
10 own codes. We can't take the codes away. Again, it's up
11 to the carriers to make those determinations, but we
12 certainly can deny access to anyone who's been found not
13 to be in compliance or come back into compliance.

14 I wanted to -- my time is up, but like Glenn,
15 I'm going to run over just a little bit. Talk a little
16 bit about the carrot and stick part, and I know Bob has
17 some questions for us down the road. But one of the
18 things that the carriers, as I said, have done is use
19 their window through the customer care calls to be able
20 to keep a running tally on sort of the pulse of what's
21 going on.

22 And there's, at least in our industry, a
23 somewhat notorious lawsuit or set of lawsuits against a
24 company called Jawa, J A W A, based in Phoenix, Arizona,
25 named after a Star War critter, that both the Texas AG

1 sued in Austin, Texas, and Verizon has sued in Phoenix.
2 Jawa has vigorously asserted in its defense counterclaims
3 and asserted that they are not what they're accused of
4 being.

5 But in that lawsuit, in the public record, it's
6 quite clear that they were at least one content provider
7 that paid very, very close attention to the monitoring of
8 customer care calls and actually would almost on a
9 dynamic basis change the landing pages for different
10 short codes and different campaigns in order to keep the
11 complaint rate just below the threshold that would
12 trigger penalties.

13 When that was discovered by Verizon, first they
14 took steps to inform consumers and reviewed the charges
15 on the consumer bills for these campaigns, set up a
16 website where consumers could go to claim refunds and
17 then worked with the state AGs and on their own to bring
18 an enforcement action. State AGs have been very active
19 in this area and, as I said, the carriers have also been
20 active and in appropriate situations have not been afraid
21 to bring their own enforcement actions.

22 So, that's a quick review. Just to emphasize
23 one more thing that Glenn said, our carriers like
24 wireline carriers had a learning experience with the
25 first round of services, premium services, that they

1 provided, where if somebody called a wireless carrier to
2 complain about a charge on their bill from a third-party,
3 depending on the carrier, the caller, it might have been
4 said, well -- might have been directed to the third-party
5 content provider. That did not work very well. That was
6 actually a very unhappy experience all around.

7 So, all of the carriers now have adopted what
8 they call one-and-done. One call to the carrier's
9 customer service rep, the charge is removed from the
10 customer's bill, again, sort of the one-bite rule, no
11 questions asked, and the carrier takes it from there and
12 deals with the third-party content provider. And that
13 has been the practice at least for a couple of years now
14 in the wireless industry.

15 So, thank you and look forward to your
16 questions.

17 MR. SCHOSHINSKI: Thank you very much, Mike.
18 And now we're going to hear from Jim Manis from the
19 Mobile Giving Foundation.

20 MR. MANIS: And being third when that time gets
21 crept up, I guess I step back a little bit, which is
22 fine. So, let me try to cover a few things quickly and
23 then leave time for Q&A, which I think will be beneficial
24 and helpful.

25 I'm here really for three relevant reasons.

1 aggregators, some other technology providers, to better
2 understand each other's business model and focus on what
3 long-term sustainability meant with respect to consumer
4 trust. So, the issues and the items that Mike had called
5 out with respect to double opt-in, clear and conspicuous
6 consent, those all emerged out of the MMA CBP processes,
7 we refer to that.

8 Those consumer best practices are -- it's a
9 very dynamic document which changes and grows two times a
10 year based on industry input. And when I say industry in
11 this case, we and MMA actively seeks input by all
12 parties, including regulators, in terms of what's best to
13 put into this document and how best to maintain consumer
14 trust and integrity.

15 And I think those documents, that CBP, has been
16 memorialized through carrier contracts, as Mike had
17 indicated, with aggregators and other parties. So,
18 that's become the measure with respect to standards or
19 best practices, against which CTI's monitoring and
20 enforcement activities take place.

21 We're big supporters of carrier and CTA
22 monitoring. We're bigger supporters of enforcement. We
23 think that it's a good business to be in as long as
24 conditions of trust are retained and argue that that type
25 of monitoring and enforcement needs to be done a common

1 basis, not on an individual carrier basis and applied
2 common across the industry. And by doing that, it's a
3 better utilization of resources and skills and talent.

4 Those experiences helped provide some
5 background with -- by launching the Mobile Giving
6 Foundation at the end of 2007. Now, monitoring and
7 enforcement are there for lots of reasons, one of which
8 is that in the commercial space, a premium event --
9 again, we'll use pre-MSS as a billing mechanism in this
10 case, but a premium event in the commercial space can
11 actually be placed on a carrier bill by that third-party
12 content provider. So, the lawsuit that Mike referenced
13 is a company removed from the carrier. This is not the
14 carrier. This is not really the aggregator involved.
15 This is a content provider, it has the ability to place a
16 transaction or a premium on the carrier bill of the
17 subscriber.

18 When we launched the Mobile Giving Foundation,
19 while we're supporters of all of this, we knew that our
20 request to the wireless operators to support mobile
21 philanthropy as a new channel on a no-cost basis had zero
22 tolerance for these types of errors. And it was our
23 intent to establish something that was based purely on
24 trust and integrity and, therefore, we eliminated the
25 ability of a charity, in this case that third-party

1 to the outline that Mike provided, using a key word to a
2 short code and a campaign is affiliated with a particular
3 price point, a \$5 price point or a \$10 price point, and
4 the donation itself is transaction-based as opposed to a
5 subscription model.

6 Our platform captures information like the
7 phone number so we can tie a donation to a specific
8 number and we can tie that donation back to a specific
9 charity. So, trust and security for the Mobile Giving
10 Foundation is really to prevent that type of cramming, to
11 prevent fraud, and to also do one additional thing that
12 is critical when we move from commercial to
13 philanthropic, and that is to be able to have end-to-end
14 insight, oversight, over the approval of a charity and
15 the actual remittance of that donation to that specific
16 charity.

17 So, again, a difference in commercial to
18 philanthropy, if you buy a ringtone or if you buy a
19 product, there's a natural feedback loop through the
20 consumer when their -- when they have a -- if they didn't
21 receive the product or if they have a complaint about the
22 product. If you give a donation, that natural feedback
23 loop disappears.

24 So, we believe it's critically important to not
25 place that function outside into the commercial space but

1 supporting Japan relief efforts, for example.

2 But those are interesting things that we learn.
3 We're very thankful for the wireless operators for
4 enabling this on a no-cost basis. We think that's
5 fantastic. We think that what CTA is doing in the
6 commercial space on monitoring and enforcement is very
7 supportive of overall growth in mobile giving. And we
8 hope that mobile philanthropy will be a deeper engagement
9 for social action overall, so thank you very much.

10 MR. SCHOSHINSKI: Thank you, Jim.

11 I had a couple of questions I wanted to ask the
12 panel, and then we're going to open the questions to the
13 audience for anything, any questions anyone may have.

14 My first question is I sort of conceptualize
15 the mobile platform as the younger sibling of the
16 landline platform, and so my question to Mike and Jim is
17 when your platform was developing and you were
18 considering guidelines and so forth, did you look at the
19 successes and the failures of the landline platform and
20 third-party billing to sort of guide you in what you were
21 doing.

22 MR. ALTSCHUL: Well, certainly the DNA of the
23 wireless industry, you know, is directly descended from
24 the wireline industry, and many of the practices and
25 certainly the billing platforms are the same. But for a

1 number of reasons which are no longer the case this case
2 of mobile marketing and premium messaging took off
3 elsewhere, particularly in Europe ahead of the United
4 States. And there were some very unpleasant consumer
5 experiences in those markets.

6 So, sometimes not being first can be
7 advantageous. And we were able to learn both from the
8 wireline experience but especially from the wireless
9 experience and those markets that were a bit ahead of the
10 United States and avoid some of the mistakes they had
11 made with setting up systems that didn't have the kind of
12 monitoring and compliance and best practices that we
13 adopted.

14 MR. MANIS: And I'd add one more thing. This
15 is not just learning from experiences in landline and
16 previous experiences in other parts of the world, but
17 also wanting to make sure that the consumer engaged in
18 using mobile was not reflective of things that we saw in
19 the online space. So, you know, e-mail marketing and
20 online distribution were of great concern for us, and we
21 wanted to make sure that that mobile engagement was more
22 trusted.

23 MR. SCHOSHINSKI: And, Glenn, my question to
24 you as the older sibling in this relationship, has your
25 industry looked at what mobile is doing and seen anything

1 MR. MANIS: I can't really talk to the
2 differences, but the -- I think, as it's been alluded to,
3 there's been a kind of an evolution of those roles over a
4 period of time. I think originally the mobile
5 aggregators definitely viewed that they would have kind
6 of enhanced responsibilities to police and monitor the
7 systems and the programs that they were running, that
8 were running through the platforms.

9 I think that at some point that became
10 separated and they simply became a processing company.
11 And I think that was -- I believe that's a bit
12 problematic. I think that they have a responsibility,
13 they do by contract, but by function in the marketplace
14 that those functions get dispersed.

15 MR. SCHOSHINSKI: Do mobile aggregators have
16 roles beyond billing? I mean, is there a transmission
17 role for the mobile aggregators, they're actually
18 providing services over the network for the mobile
19 aggregator?

20 MR. MANIS: They do. They're responsible, they
21 have messaging -- routing engines, they do billing
22 engines, so they have -- and oftentimes they'll have kind
23 of campaign management responsibilities. There's no one
24 aggregator that really looks the same. Each
25 distinguishes their services, if you will, based on the

1 layer, is obviously a part -- and there's an obligation
2 to follow and make sure that the billing aggregator is
3 doing what it agreed to do in the contractual
4 relationship. And, so, I know some of the companies have
5 contractually provided for third-party auditing
6 companies, well known third-party auditing companies to
7 do contract audits to make sure that the billing
8 aggregators are, in fact, doing what they've committed to
9 do in those contracts.

10 MR. SCHOSHINSKI: And can you give us some
11 examples of what they look for in those audits, what kind
12 of information they're auditing?

13 MR. REYNOLDS: I think they're auditing the
14 practices such as when we talked about, for example, at
15 the front end the companies are obligated to -- the
16 aggregators are obligated to get information about the
17 service providers as to what the company's providing,
18 whether there's a real product there, whether they've set
19 up 800 numbers, and auditing -- making sure that the
20 applications include real information about the ownership
21 of these companies, comparing ownership with other
22 companies to see whether they're doing some of the
23 schemes that have identified before.

24 Those are the key -- you know, so those
25 obligations are part of what the aggregators should be

1 committing to do as part of the contract and the
2 aggregator -- the auditors of the aggregators are making
3 sure that the aggregators are, in fact, have processes in
4 place and are following those processes.

5 MR. SCHOSHINSKI: And, Mike and Jim, can you
6 talk about -- you mentioned sort of the auditing that
7 goes on both at the CTIA and through the MMA guidelines.
8 Can you talk a little bit about what that involves, what
9 gets done there?

10 MR. ALTSCHUL: Well, as I said, probably every
11 campaign at the registry has to identify the information
12 which the industry needs and our outside auditors need to
13 monitor that campaign. And we turn over the code to the
14 auditors who, at least on a monthly basis, will interact
15 with the short code to make sure that it's fully
16 compliant both with the MMA best practices and with the
17 descriptions that it provided to the carriers when it
18 obtained the short code number in the registry.

19 The other piece of it is that when violations
20 are detected, and they're detected quite regularly,
21 unfortunately, the information is passed through the
22 aggregator and often the content provider and given the
23 severity of the violation -- and the severity of the
24 violation is really dictated by the effect to the
25 customers -- there is a period to cure before that code

1 that a financial penalty or something else?

2 MR. MANIS: It certainly translates to a
3 financial penalty.

4 MR. SCHOSHINSKI: Okay, we don't have a lot of
5 time, so I'd like to open it up for questions. And if
6 you would get -- we'll have the microphone sent over to
7 you and say your question in the microphone and identify
8 yourself before you ask your question.

9 MR. BUNTROCK: I'm Ross Buntrock with Arent
10 Fox. I actually represented the MMA in the California
11 third-party billing proceeding. My question is this: I
12 think a lot of MMA members would acknowledge that the
13 premium -- the premium SMS models is going the way of the
14 dinosaur pretty quickly. Any my question to the panel is
15 as the concern becomes more about application-based
16 cramming, as articulated by Senator Klobuchar and others,
17 is the MMA guidelines -- are they flexible enough and is
18 the CTIA's auditing procedures applicable -- I guess my
19 question is how are we going to make the leap to the next
20 generation beyond premium SMS as it regards this issue.

21 MR. ALTSCHUL: CTIA's members certainly believe
22 that the MMA guidelines are appropriate to all of the new
23 in-app marketing and something called long codes, which
24 are basically a view-IP 10-digit phone number that don't
25 necessarily go through the same carrier vetting process,

1 just don't go through the carrier vetting process that
2 common short codes do.

3 It gets more and more complicated when the
4 billing is not on the carrier's platform for the carrier
5 to be able to detect through spikes and calls to customer
6 care and the like, consumer complaints. But we are at
7 CTIA undertaking an initiative to develop a set of best
8 practices for wireless application developers and
9 wireless applications that would include incorporating
10 these consumer protection guidelines. And while no one
11 can tell -- you know, can require an app store, app
12 developer to follow it, certainly consumers who are
13 interested in using applications that are trustworthy can
14 look for a mark or some other seal that would indicate
15 that the app provider follows industry best practices.

16 MR. SCHOSHINSKI: Okay, any other questions?

17 MR. WOLFE: Just real quick, because it's
18 actually the microphone. This is Doug Wolfe from the
19 FTC. This is a question for Mike. What exactly is
20 captured in the message flow interception and how does --
21 for somebody who's not technically knowledgeable about
22 this, how does that relate to the question that was just
23 asked?

24 MR. ALTSCHUL: Well, the current monitoring is
25 the kind of premium content that customers subscribe to

1 using text messaging. So, when you opt in, you'll get a
2 response from the content provider; it will advise the
3 customer of the charges, if any, or if standard message
4 rates apply; the frequency of the service, how many times
5 a day you'll get ball scores or horoscope or the like;
6 information, where to go for help; and instructions to --
7 how to subscribe by responding with yes or no or help or
8 whatever.

9 The monitoring that's conducted by the industry
10 actually monitors for those critical elements in the
11 return message to make sure that every consumer gets each
12 and every one of those instructions that have been
13 identified as the information customers need to
14 understand what they're subscribing to.

15 The content monitoring is different. That's
16 the monitoring of internet websites and late-night cable
17 TV show ads and things like that to make sure that the
18 short code is being used in the way that carriers
19 understood it was to be used.

20 But the message flow is actually if you text
21 help to a short code, do you get information back
22 answering your question; if you text stop, does the
23 subscription and the billing stop.

24 UNIDENTIFIED SPEAKER: Is part of what's
25 captured the actual -- some piece of digital evidence, if

1 you will, that --

2 MR. ALTSCHUL: Screen shots.

3 UNIDENTIFIED SPEAKER: -- message --

4 MR. ALTSCHUL: Our monitoring captures the
5 screen shots.

6 MR. SCHOSHINSKI: We have time for one more
7 question.

8 MR. ALTSCHUL: I actually have a monitoring
9 report if you're interested to show you afterwards.

10 MR. ZIMMERN: This is Christian Zimmern from
11 the Mobile Giving Foundation. Actually, the messages are
12 actually stored at the aggregator and the carrier level
13 so you could actually do look-ups on a phone number basis
14 for every single message sent to a phone number. So, the
15 data is there; you just need to know where to look.

16 MR. SCHOSHINSKI: Great. Well, I want to thank
17 Mike, Jim, and Glenn for participating. I think it's
18 been very informative and helpful. And I'd like to give
19 them a round of applause.

20 **(Applause)**.

21 MR. SCHOSHINSKI: We will be back at 2:45 for
22 the next panel. If you had questions for this panel and
23 weren't able to get it, feel free to submit a comment
24 card, and we'll see if we can get you an answer.

25 **(Recess)**.

1 **SESSION 4: POTENTIAL SOLUTIONS TO THE CRAMMING PROBLEM**

2 MS. GREISMAN: I am going to ask everybody to
3 take a seat, please.

4 Okay, let's get started. Good afternoon,
5 everybody. My name is Lois Greisman. I'm with the
6 Division of Marketing Practices at the Federal Trade
7 Commission. Good to see you all here. We are in the
8 home stretch. This is the last panel. It will be
9 followed directly by remarks from Deputy Director Chuck
10 Harwood.

11 I'll be going with the disclaimer. The views
12 that I express are my own, not those of the Commission or
13 any individual Commissioner. So, perhaps there are some
14 out there who are English majors or theater buffs, and
15 you might be familiar with a famous first line in a play,
16 Samuel Beckett's play, Waiting for Godot, in which
17 Estragon turns to Vladimir and says, "Nothing to be
18 done." Well, we could discuss the philosophical,
19 political, moral implications of that line and of that
20 entire play, and that would be a lot of fun. But that's
21 not what we're here to do this afternoon.

22 In fact, I would entitle this panel, "Something
23 to be done." If we've heard nothing else for the last
24 several hours, we've heard loud and clear that there is a
25 problem out there. And we've already heard a fair amount

1 about some possible solutions, some possible approaches
2 to tackling what is a significant consumer protection
3 problem. And we have the benefit this afternoon of a
4 panel of experts who will probe some of those issues more
5 closely.

6 I'm going to introduce them briefly and turn it
7 over to them in just a couple of minutes. First, Erik
8 Jones, who is counsel to the Senate Commerce Committee on

1 enforcement colleagues, who simply were not able to be
2 with us this afternoon. Briefly, I spoke with Jim
3 DePriest from the Arkansas Attorney General's Office.
4 His office has been working directly with LECs so that
5 each would provide a free third-party billing block,
6 which would be available upon request. He said this is
7 modeled off of an agreement from July of 2009 that
8 Connecticut entered into with the LECs in which they
9 agreed to -- excuse me -- that agreement was with AT&T,
10 in which AT&T agreed to block all third-party charges at
11 the consumer's request. The proposal in Arkansas, as was
12 the case in Connecticut, would be limited to landlines.

13 Second, from California, Denise Mann in the
14 Public Utilities Commission, has been working on a bill
15 that is pending in the legislature, SB905, that would
16 require the LECs to report the cramming complaints that
17 they receive directly to the Public Utility Commission.
18 Now, that reporting requirement only extends to
19 aggregators. That bill would cover both wirelines and
20 wireless complaints.

21 So, with that as part of our backdrop, I'm now
22 going to ask Erik to give us some historical perspective.

23 MR. JONES: As Lois said, my name is Erik
24 Jones, and I'm Counsel for the Senate Commerce Committee,
25 which is chaired by Senator Rockefeller. And first I

1 Committee. And he did that because the Senate Commerce
2 Committee has very important jurisdiction over important
3 aspects of the American economy. And we also have
4 jurisdiction over the FCC and the FTC, which are
5 important consumer protection agencies and are partners
6 with the Committee in combating abusive practices.

7 So, one of the first investigations that the
8 Committee undertook once Senator Rockefeller became the
9 chairman to combat an abusive practice was this -- was a
10 practice where a number of companies were using an
11 abusive online marketing practice to enroll consumers in
12 discount programs that they weren't aware they had become
13 enrolled in.

14 And what we found through this investigation
15 was that millions of consumers were enrolled and millions
16 of consumers were charged \$10 to \$15 on a monthly basis.
17 Now, that might seem to be a very small amount, but over
18 time, especially if a consumer doesn't catch it, that
19 adds up, and it adds up very quickly. And if a company
20 can get away with charging, let's say, millions of
21 customers or consumers this \$10 to \$15 charge, very
22 quickly it becomes a billion-dollar problem.

23 And, so, we found that to be a -- when we
24 looked at the problem initially, we didn't know how bad
25 it was going to be, and actually we were shocked that it

1 was a billion-dollar problem. And we eventually passed
2 legislation to fix it. But once we were finishing that
3 investigation, we took a look around and tried to find
4 other areas that needed to be addressed. And one of
5 those we quickly saw, and this was last year, was the
6 issue of cramming. And it presents similar problems, and
7 it's a similar scenario that we saw in this other
8 investigation we investigated about the online marketing
9 practices.

10 Consumers have been complaining for years that
11 they are getting \$10 to \$15 worth of unauthorized charges
12 on their telephone bills on a monthly basis. And what we
13 saw when we were taking a look around, we saw that the
14 FTC had brought a case against a company for doing this
15 and that it resulted in millions of dollars in consumer
16 redress. We've seen state attorney generals do the same
17 thing over a period of time. And we decided to open up
18 this investigation because what we see, we're trying to
19 determine whether there's a similar problem on the
20 telephone side where, you know, because there are so many
21 landline telephone bills out there, if only a percentage
22 of them are being crammed on a monthly basis, that
23 quickly could become a billion-dollar problem just like
24 what we saw in our last investigation.

25 So, that is -- that was what got us into

1 tried to tackle it. Now we've spent the better part of a
2 year on this -- I mean almost a year, and Senator
3 Rockefeller just announced today that in the coming
4 months we will be doing a hearing and issuing a staff
5 report on that.

6 So, at this point, I can't get into detail, but
7 I can provide a little bit and sort of explain what we're
8 seeing, without going into detail of what -- the
9 information we received. The investigation was opened in
10 June of 2010, and we started with writing letters to
11 three of the largest telephone companies. And we started
12 there because in Senator Rockefeller's mind, in our mind,

1 understand who are these companies.

2 And we quickly realized that a lot of these
3 companies are -- appear to be bad actors. They had a lot
4 of complaints; they had bad ratings from the Better
5 Business Bureau. You take a look at their websites, they
6 do not look like the kinds of legitimate companies you
7 would expect to find where customers are actually paying
8 for the services. And what we did, we -- from there, we
9 sent letters to a number of the third-party companies
10 that were billing. And we're trying to understand sort
11 of their practices, as well.

12 So, since then, we've spoken to auditors who
13 make their living off of taking unauthorized charges off
14 of phone bills. We've spoken to presidents of these
15 companies that are offering -- that place charges on
16 phone bills. We've spoken to the phone companies.

17 And based upon all of this, what we are seeing,
18 and Senator Rockefeller has just released a letter where
19 he says this, but we're seeing that cramming is a
20 pervasive problem on the third-party billing system. It
21 appears to be rife with fraud. And we -- and that is
22 because it appears that the telephone companies have been
23 too willing to place third-party charges on their
24 customers' bills without first determining whether or not
25 those charges are, in fact, authorized.

1 So, that is the -- because of that, we've
2 shared all of our evidence with Senator Rockefeller, he
3 came to the same conclusion. That's why he has announced
4 that he's going to be doing a hearing and releasing a
5 staff report at some point in time.

6 And, you know, I just want to point out, too,
7 that when we were taking a look at all these companies,
8 we ended up releasing a press release at one point that
9 -- mentioning that there are 250 -- there were 250
10 companies that had Ds or Fs from the Better Business
11 Bureau for cramming. And we've been asked about that
12 number before, and, frankly, we just stopped at 250. It
13 wasn't that we only found 250; we just -- we sort of just
14 -- basically we got tired of looking. So, we saw enough
15 to know that there's -- this is a major problem.

16 I can't go into more detail at this point about
17 what it is the Committee is reviewing, but, as I said,
18 we'll be doing something publicly in the near future. I
19 also just want to take a few minutes just to explain what
20 we're seeing. As many of you know, cramming is not a new
21 problem. This has been addressed a number of times
22 today. It dates back to the 1990s when the credit --
23 when the telephone companies first opened their bills to
24 third-party charges.

25 And, one, I want to make a point, too, that

1 earlier it was suggested that, well, there's a point in
2 time when the telephone companies were required to place
3 charges on their bills and now they're not required.
4 Whatever that may be, the telephone companies were never
5 -- have never been required to place unauthorized charges
6 on telephone bills, and I think that's an important point
7 to make. So, even when sales reps are saying that to
8 their customers, that's -- that they were required to do
9 it, even if it was before 2007, they were never required
10 to put unauthorized charges on their customers' bills.

11 And I just want to spend just a couple minutes
12 talking about what we saw -- so, part of our
13 investigation, also, is just taking a look at the record
14 that's developed about cramming over the last 15 or so
15 years. And as Glenn mentioned earlier, the response that
16 happened in the late '90s was quick. When cramming first
17 appeared, the rise was so significant that the question
18 at that time was not whether or not there should be a
19 solution, but the question was what should the solution
20 be. And the response was and telephone companies quickly
21 got together and said let's do this voluntarily, let's
22 fix this ourselves.

23 And by the time Congress got involved, because
24 Congress did hold a number of hearings on this issue, the
25 hearings that were held, the question that was addressed

1 during those hearings was basically about whether the
2 voluntary actions would be enough. And what you saw in
3 these hearings in the late '90s were the members of
4 Congress who were on these committees, they were afraid
5 of getting ahead of third-party billing, because no one
6 wants to stifle innovation. And that's something that
7 you see up here on Capitol Hill right now about the new
8 issues that are appearing, whether it's privacy or
9 whatever it is. No one wants to get in the way of
10 innovation. And at the time, third-party billing was a
11 very new system.

12 So, that was the framework within which the
13 members of Congress looked at it, but they also were very
14 concerned that the voluntary approach wouldn't be enough.
15 And they were concerned because a lot of them took a look
16 back at what happened on the credit card industry in the
17 1970s, because a lot of people don't know this, but the
18 credit card industry had the same problem as the
19 telephone companies do with cramming. It was slightly
20 different, but there were so many unauthorized charges
21 appearing on credit cards that consumers were losing
22 confidence in it.

23 And in response, Congress passed the Fair
24 Credit Billing Act, which placed requirements on the
25 credit card companies and limited the liability that

1 individuals could have, credit card customers could have.
2 And, so, that was addressed. Senators looked back to
3 that and thought maybe that's what we should be doing
4 with respect to telephone bills. And in the end, the
5 decision was made let's give the telephone companies the
6 benefit of the doubt, let's allow them to fix this
7 themselves.

8 And, so, today, 10 years later, when a charge
9 is placed on a -- an unauthorized charge is placed on a
10 telephone bill and a telephone consumer is trying to fix
11 that, they're in a much different position than a credit
12 card consumer who has an unauthorized charge on his
13 credit card or a consumer who has an unauthorized charge
14 on their debit card.

15 Their protections are much different, and
16 because of that and because we're seeing that cramming
17 remains to be a large problem, Senator Rockefeller has
18 said that he wants to reexamine the voluntary guidelines
19 that were established in the late '90s. And whether they
20 were effective at that time, I've read and I've seen
21 that, you know, the complaints came down afterwards, but
22 what we're seeing is the cramming complaints have gone
23 back up and in order to put an end to this problem once
24 and for all, I think that we're going to have to
25 reexamine and take a close look at it once again.

1 And I just want to close just quickly with
2 Senator Durbin was at these hearings that were happening
3 back in the late '90s, and he was very concerned about
4 the unauthorized charges that were appearing, he was
5 concerned with the voluntary approach. And he said, you
6 know, we may find ourselves months from now or years from
7 now saying this just did not do it. And I found that
8 very telling now that it's over 10 years later and here I
9 am trying to address cramming. And his words, you know,
10 were certainly prophetic.

11 And I just -- I know that Senator Rockefeller
12 will not want another 10 years to go by and all of us to
13 get back together here and talk about cramming once
14 again. So, I'm happy to take your questions later.
15 Thank you.

16 MS. GREISMAN: Thank you, Erik. Elliot, you're
17 up next.

18 MR. BURG: Hi, Lois. Thank you for inviting
19 me. This is Elliot Burg, I'm in Montpelier at the
20 Vermont Attorney General's Office. And I wanted to talk
21 briefly about a bill that was approved last week by both
22 houses of the Vermont legislature, and it addresses
23 cramming actually by prohibiting most third-party charges
24 to local phone bills, meaning landline bills.

25 But before I talk about the legislation, I'd

1 like to give a little bit of background, and I'm going to
2 be talking about that same 10-year interval that Erik
3 just referred to. Back in the year 2000, the State of
4 Vermont responded to concerns about cramming by enacting
5 a disclosure statute, which required -- actually today
6 still requires -- that any third-party that wants to
7 place charges on a local phone bill has to send through
8 the mail a freestanding notice of that fact to the
9 consumer, and in Vermont a consumer includes both
10 individual consumers and businesses. And the letter has
11 to disclose what is being purchased, for how much, any
12 right of cancellation, and contact information for the
13 Attorney General's complaint-handling office.

1 the merchants that they aggregate for, we've issued
2 subpoenas to, at this point, probably three or four dozen
3 merchants. We've taken a look at marketing materials.
4 We have surveyed their customers. We've looked to see if
5 they've been complying with the notice requirement that I
6 just mentioned.

7 And, basically, here's what we've found. First
8 of all, almost nobody is complying strictly with this
9 requirement, but that's just one issue. There's a more
10 fundamental reality that has to do with what people
11 understand is actually happening or don't understand is
12 happening.

13 Secondly, we found that I think I can say all
14 or virtually all of the telephonic scripts that have been
15 used, that is where third-party charges to phone bills
16 are supported by telephonic marketing, typically to
17 businesses, the scripts have been deceptive. It's almost
18 as if somebody wrote one deceptive script and everybody
19 picked up the same wording. It's a little uncanny.

20 But most importantly we have found based on
21 surveying customers of the companies that have been
22 putting through these charges to the phone bills and
23 interviewing many of those people and businesses, we have
24 found that a very substantial majority of the people out
25 there do not understand that they can be billed on their

1 phone bills for charges that are unrelated to their
2 telephone service. We sent out in the first wave of
3 merchant investigations, we sent out I think about 1,700
4 written surveys. We got something over 500 responses
5 back, which is not bad for that kind of survey, and
6 almost 93 percent of the people who responded had
7 absolutely no recollection of ever having agreed to be
8 charged on their local phone bills.

9 So, we came back to the issue of reasonable
10 consumer expectation. And last fall, we began
11 discussions with the local exchange carriers in Vermont,
12 FairPoint and other smaller companies. And our appeal to
13 them was that the people that are being harmed by these
14 kinds of charges, these unauthorized and/or unknown
15 charges, are their customers, too. And we ended up
16 forging kind of a three-way coalition with the local
17 exchange carriers and our Public Service Department,
18 which is the advocacy -- the consumer advocacy wing of
19 our Public Utilities Commission.

20 We went to the legislature in January with an
21 anti-cramming bill. And that's what was approved last
22 week, and here's what it provides. It prohibits third-
23 party charges for goods or services on local exchange
24 phone bills, landline bills.

25 It has the following exceptions, and I think

1 you can probably understand when you hear what those are
2 why we considered it reasonable to include these as
3 exceptions. So, you can put through that kind of billing
4 for goods or services that are marketed or sold by
5 companies that are subject to our public service board,
6 our Public Utilities Commission, jurisdiction. And,
7 also, exempted or excepted are direct and dial-around
8 phone calls, operator-assisted calls, collect calls, and
9 phone service between prison inmates and their families.

10 Carried through from the earlier disclosure
11 statute was strict liability imposed on the aggregators.
12 So, if a charge is put through under the new law that is
13 not allowed, the aggregator responsible for placing that
14 charge on a phone bill is equally liable. A violation of
15 the prohibition is a violation of our Consumer Fraud Act.
16 It is deemed an unfair and deceptive act and practice and
17 can be sanctioned with a requirement that consumers be
18 refunded their money, up to \$10,000 in civil penalties,
19 injunctive relief, attorneys' fees, and other kinds of
20 relief.

21 So, in essence, we've gone all the way here and
22 said that -- I think what we've done reflects some
23 reticence about -- some hesitation to believe that there
24 is a way of keeping the onus on consumers to opt out of
25 this kind of billing or to recognize on their telephone

1 bills that they actually are being charged for something
2 they haven't agreed to. And we simply said, here, if a
3 merchant wants to be paid by a business or an individual
4 consumer, there are lots of ways of doing that. There
5 are credit cards and debit cards and checks that can be
6 written and PayPal. This is not an appropriate way to do
7 it, and it's not consistent with normal, human
8 expectations out there, and it's not going to happen
9 anymore.

10 So, we're awaiting our Governor's signature on
11 this legislation, which we expect fairly soon, and I'm
12 happy to answer any questions that anybody may have. I
13 personally think this may be a model for other states
14 that want to deal in a fairly strong way with the
15 phenomenon of cramming, but obviously that's a decision
16 that each jurisdiction has to make themselves. So, thank
17 you.

18 MS. GREISMAN: And we thank you very much. And
19 I'm going to hold questions until later.

20 Next, Keith.

21 MR. VANDEN DOOREN: Thanks very much. My name
22 is Keith Vanden Dooren, I'm with the Florida Attorney
23 General's Office. I would first of all just say I ditto
24 everything Elliot just said, in particular, putting the
25 onus on consumers to, you know, get unauthorized charges

1 off their bills after the fact is not where we need to
2 go. But I'm going to get to that in a minute.

3 And I'm also going to go through some slides
4 here, but I'm going to go through them fairly rapidly
5 because some of this has already been covered, and I
6 don't want to be redundant in going over it again.

7 First thing I want to talk about a little bit
8 is complaints. And I'm going to -- I need to go into
9 this a little bit to lead into what Florida wants to
10 recommend in terms of a solution to cramming. And first
11 of all, we were talking a lot today about complaints and
12 the capturing of complaint data. And one of the things
13 that we've found is that whatever is being captured and
14 turned over by the carriers, aggregators, and others is
15 not what we see as the total number of complaints.

16 For example, we know that when customers
17 receive partial refunds, sometimes it's three months,
18 companies will give them three months of a refund credit
19 on their bill. Well, a lot of times the carriers view
20 that as a resolution and that's not a complaint. Well,
21 to us, that's a complaint.

22 This came out strong in a case that we were
23 handling not too long ago in a trial where we requested
24 certain complaint data in discovery. And we happened to
25 have about 30 witnesses, consumer witnesses, on our

1 witness list. And we asked the carriers for all of the
2 complaint data that they had relating to these witnesses,
3 because we already had written documents where they had
4 sent the information to the carriers, but we wanted to
5 see everything the carriers had.

6 The carriers came back with only about less
7 than 50 percent of the complaint data relating to our own
8 witnesses in this case. I'm not sure how that happens,
9 but whatever complaint data is being captured is not 100
10 percent, I don't believe, of the complaint data where
11 customers are making complaints to the carriers and
12 aggregators. So, that is problematic, also.

13 I'm just going to go through a few of the
14 complaints because I think it reflects why we think we
15 should have a solution, and I'm going to get to in a
16 second here to block all unauthorized third-party
17 charges, unless a customer would want to authorize that.

18 First of all, this is a consumer who complained
19 about the fact that Verizon was basically using her bill
20 as a credit card, which, in fact, she had said she had
21 never given them permission to do. Unlike credit cards,
22 this kind of billing structure does not have all the
23 safeguards that credit cards have, including a certain
24 level of injury before, you know, it ceilings out, they
25 don't have PIN numbers, we don't have credit card

1 numbers, we don't have any of that kind of security like
2 we do with a credit card.

3 And, also, we have carriers who continue to
4 say, and this came out in other panels, where the
5 carriers tell customers, and we have this in Florida all
6 the time, that we cannot help you, we cannot refund your
7 charges, we cannot put a block on your phone, things such
8 as that.

9 I think this particular complaint in Florida
10 was very telling. When this particular customer called
11 and it happened to be Verizon -- I'm not picking on
12 Verizon -- they were told that they couldn't get -- they
13 never said anything about a third-party block, which that
14 happens quite frequently, and I'm sure it happens all
15 over the country. And it continues to happen, and I
16 don't know if that's a training problem or otherwise, but
17 in any event, it happens. And this customer says, "I
18 would think that the block would be automatic unless the
19 customer requested not to have a block. That way, such
20 events would not take place."

21 And just -- I'm not going to spend a lot of
22 time because this has been stated before and I think
23 Elliot stated it pretty well in his presentation, but
24 basically most customers do not know that third-party
25 charges can be placed on their telephone bills. I mean,

1 they don't think that way, and they're not expecting it.
2 And because they're not expecting it on their telephone
3 bill, they're not looking at it very closely either,
4 which means that they normally don't pick up on the fact
5 that they have had unauthorized charges placed on their
6 bill.

7 Case in point, we had a case against EDN. I
8 think that's E-mail Discount Network. And in that case,
9 our investigators went out and contacted approximately
10 200 customers. Not one of those customers, not one, knew
11 that they had had these charges on their bill until they
12 looked at it. Customers are not going to pick up on
13 this.

14 The other problem I see in the cramming area is
15 that all of the parties -- I'm talking about the
16 carriers, the aggregators, and the vendors -- all are
17 uncentivized, they all make money out of this. And most
18 of the time what we hear from customer service reps and
19 others is they are incentivized to save -- save --
20 accounts and transactions and charges, not to remove
21 them. And we get so many complaints where people have
22 asked to have the charges removed, they send them through
23 the circle. They send them to the aggregator, they send
24 them to the vendor. And they get into the circle and
25 they never get out of the circle.

1 All right, this takes me to what we would
2 recommend in Florida, although I might say as a personal
3 note that I would be in favor of just banning all types
4 of third-party charges. I think that would take care of
5 the matter, and I think it's appropriate in view of the
6 fact that most customers don't know they're getting these
7 charges and don't expect to get charges on their phone
8 bill. And I'm talking landline. Wireless is another
9 issue, but I think it could use the same approach.

10 What we are offering up as a suggestion --
11 excuse me -- on behalf of Florida is the initial block.
12 And what we mean by that is the way it's set up now,
13 somebody has to ask voluntarily to have a block put on
14 their telephone account. We would like to see this
15 reversed, since most people don't know they're getting
16 these charges on there and don't anticipate getting any
17 of these charges on their phone bill is to have a block
18 put on initially.

19 Then, if a customer so wants to have some
20 third-party service, product, whatever, they can contact
21 their carrier, who they -- that's where they go to
22 directly. I mean, that's who they trust to do all of
23 their phone bill transactions. To have the third-party
24 block removed either as to a particular sub-kick vendor
25 or to have it removed as to everything.

1 And if that were done, we would have to have
2 clear and conspicuous, informed -- clear and conspicuous
3 disclosures about what that would mean to get the block
4 removed and all the terms and conditions that relate to
5 that, as well as an expressed, informed consent to do it.
6 And what we mean by that is some kind of written document
7 from the account -- telephone account owner to the
8 company saying "I want this block removed either
9 partially or in full."

10 So, with that I guess I'm pretty well out of
11 time, right, Nadia? All right.

12 MS. GREISMAN: Do you want a minute to wrap up?

13 MR. VANDEN DOOREN: I'm fine. I'm at the --
14 the only other thing I would say is -- I have another
15 slide here. This -- we have addressed also in Florida
16 carrier -- what we call carrier add-on charges, which one
17 of our bigger cases was related to roadside assistance.
18 Roadside assistance is like AAA, you know, they go out
19 and pick up your car if you have to have a repair or
20 whatever.

21 This actually went through the wireless side,
22 and it was a wireless company. And it was basically --
23 what we see also in cramming is that most of the offers
24 are in negative options. So, you got a free trial for 30
25 days; if you don't like it, you got to cancel it, people

1 don't know they have to cancel it, it's not really
2 disclosed, those kinds of things. That's what happened
3 in this particular case I'm referring to. The carrier,
4 at the point of sale, sometimes never even mentioned
5 roadside assistance but people ended up with it. Didn't
6 know they had for long periods of time, sometimes years.

7 So, it's not just limited to distinct third-
8 party vendors. It also happens once in a while with
9 regard to the carriers themselves and their particular
10 products that they're selling and offering. So, with
11 that, I appreciate it, thanks very much.

12 MS. GREISMAN: Thank you very much, Keith.

13 Joel?

14 MR. GURIN: Hi. I'm Joel Gurin, I'm Chief of
15 the Consumer and Governmental Affairs Bureau at the FCC
16 and very glad to be here. I would say at the FCC we have
17 been involved in the issue of cramming in many different

1 areas where it would be important to look for solutions.
2 We look first at our own complaint data. We receive
3 cramming complaints about both wireline and wireless
4 carriers.

5 And one thing that the FCC actually does is
6 that we actually will try to mediate these complaints for
7 consumers. So, if people have gone to their carrier and
8 haven't been successful, we will get involved and try to
9 get satisfaction for them. So, that means that we often
10 compile fairly lengthy kind of dossiers on these cases,
11 which is very helpful in looking at a problem like this.

12 We get about 2,000 to 3,000 complaints a year
13 about cramming, which given our complaint data base is
14 quite significant. And what we have found in the last
15 few years is that about 85 percent of those are wireline
16 and maybe about, you know, around 15 are wireless. So,
17 we are seeing wirelines still as the dominant problem,
18 but not as big -- but that wireless is also one that I
19 think is going to increasingly need some attention.

20 What people complain about is, you know,
21 services like long distance call, international, or
22 collect calls that were not actually made or received, as
23 well as add-ons like games or security, tech support,
24 things like that that they see on their landline bills.
25 And on wireless, we also get -- we also get, of course,

1 without knowing that.

2 We actually consider that to fall under
3 cramming because we consider it an unauthorized charge
4 placed on the bill by the carrier. And that was -- that
5 was actually a major settlement where Verizon is now
6 refunding customers more than \$50 million for improper
7 charges, and they've made a voluntary \$25 million
8 contribution to the U.S. Treasury, which is the largest
9 payment the FCC has ever secured in a case like this.

10 We also, as we assess the scope of this
11 problem, so the name of my bureau is Consumer and
12 Governmental Affairs, that means we work a lot with state
13 and local governments. And we've been very, very
14 interested, certainly very interesting to hear what's
15 going on in Florida, what's going on in Vermont.

16 We've also been interested in the statistics
17 collected in California. So, in California, there's a
18 law that the LECs have to make public the number of
19 complaints that they get on cramming every year. And
20 it's very interesting because it kind of gives you
21 perspective on the ratio of the complaints we see, the
22 complaints we don't see. So, the state PUC in California
23 gets around 2,000 to 3,000 formal complaints about
24 cramming that come to them every year. But the LECs
25 apparently get about 120,000 complaints a year, which are

1 made public under California's law.

2 Now, we figure that's maybe 1 or 2 percent of
3 all landline households in California. But we also know
4 from a lot of experience, and you heard a lot about this
5 today, that so many cases of cramming go undetected that
6 they never reach the complaint state. So, I think
7 there's all kinds of evidence that this is a significant
8 problem.

9 So, what we've been doing, in August 2009, the
10 FCC issued a notice of inquiry on consumer information
11 and disclosure, which I kind of think of as truth-in-
12 billing at large. So, this builds on truth-in-billing,
13 but unlike truth-in-billing, we are looking not only at
14 billing issues but also at disclosure at the point of
15 sale, at disclosure of fees, you know, when somebody may
16 want to change service so this takes into account things
17 like early termination fees and so on.

18 We've gotten a number of comments under that
19 notice of inquiry from state and federal groups and
20 consumer groups about the continuing problem of cramming.
21 The attorneys general of more than 25 states told us that
22 cramming is a significant problem for consumers in their
23 states. And we continue to see this as a very
24 significant issue.

25 So, what can be done about this? As I said, we

1 are kind of in studying and listening mode, but there are
2 certainly a number of kinds of issues that have come to
3 our attention as possible areas. And I think they really
4 fall in the very general areas of disclosure and blocking
5 and education. I mean, one thing that we think we can
6 take part in doing is educating consumers about the
7 existence of cramming because it's clear that so many
8 people still don't know about it.

9 Blocking options, I think, are very
10 interesting. You know, one thing that we noted on the
11 wireless side is the CTIA has just come out with a
12 wireless consumer checklist initiative to give consumers
13 standard questions to ask when they sign up for wireless
14 service. We think this is a great development and we
15 note that one of those questions is asking whether or not
16 it's possible to block third-party charges from a
17 consumer's bill. So, we think that that kind of
18 awareness at the point of sale is a very good thing.
19 Many people don't know about blocking options when they
20 sign up.

21 We've also found in talking to wireline and
22 wireless carriers that many carriers actually do not
23 offer that option when you sign up, but they will offer
24 it if you call to complain about cramming. So, given
25 that it's obviously possible to offer a blocking option,

1 the question is could this be done earlier, could this be
2 done more proactively.

3 We think that billing formats are definitely
4 something to look at, clear and conspicuous disclosure
5 can mean different things to different people. We have
6 certainly had complaints from people where either third-
7 party chargers were mingled in with other legitimate
8 charges or were put at the very end of the bill after
9 what looked like the last page of a bill. So, it was
10 there in a separate form, but it would be very easy to
11 miss, even for somebody looking at their bill.

12 I think a lot of -- a lot of -- those two
13 areas, disclosure and blocking, leave a lot of room, I
14 think, for exploration, for exploration for voluntary
15 solutions, for other kinds of solutions, clearly. And
16 there is state legislation happening now, the Senate's
17 investigation of this, of course, is of great interest to
18 us. But we do think that this is a very important
19 problem. It's a very nagging and significant problem and
20 one that really is amenable to some fairly simple
21 solutions as we go forward. So, thank you very much.

22 MS. GREISMAN: Thank you, Joel.

23 John?

24 MR. BREYAULT: So, I'm in the unenviable
25 position of batting cleanup after all these great

1 comments, but I did want to take a moment to thank Lois

1 idea that they had signed up for these charges. There
2 have been other similar statistics described today.

3 To a consumer organization like us, third-party
4 billing on landline phone bills is in many ways a relic
5 of the days before consumers began to widely adopt credit
6 and debit cards. Credit in particular has described. It
7 provides many more protections for consumers under the
8 Fair Credit Billing Act than they have on their phone
9 bills. In a sense, you know, we almost wish that
10 telephone companies would focus on providing telephone
11 service and less on being -- providing billing and being
12 a de facto payment mechanism.

13 So, what are some areas for improvement and the
14 cramming problem can be addressed? As I described, I
15 think number one, it's inherently flawed. The blanket
16 outlawing of third-party billing through the landline
17 phone bills seems to us like the most prudent option.
18 That said, until legislation passes that addresses that,
19 and we certainly hope that Senator Rockefeller will
20 consider that when his investigation is completed, we
21 still think there are several improvements that can be
22 put in place.

23 First, all phone customers requesting a third-
24 party billing block should be granted it with no
25 questions asked. AT&T mentioned in its filing for this

1 workshop that it proactively offers third-party billing
2 when a consumer calls with a cramming complaint, where
3 other telephone companies don't offer that and they
4 should.

5 Third-party billing should also -- third-party
6 billing block should always be free of charge, and we
7 think that it should be offered as an option at service
8 inception. Better yet, third-party billing should be
9 turned off by default for all existing customers unless
10 they affirmatively opt in for a service they express a
11 desire for in writing.

12 Second, telephone companies, regardless of
13 their size, should be required to conduct thorough and
14 ongoing cramming prevention audits of the aggregators and
15 third-party service providers with whom they have
16 contractual agreements. Senator Rockefeller's cramming
17 investigation suggests that despite the protection
18 programs in place, cramming remains a significant issue
19 and that the existing audit and control mechanisms that
20 are in place are insufficient to address the problem and
21 keep it in check.

22 There needs to be better coordination between
23 the carriers and the stakeholders in the cramming debate,
24 including the FTC, the FCC, and the BBB. If a cramming
25 complaint is received by any one of those three

1 organizations, it should trigger an investigation by the
2 carrier with the billing aggregator and the third-party
3 vendor.

4 As Senator Rockefeller noted, third-party
5 service providers have a pretty terrible record with the
6 BBB and are generating thousands of complaints to the
7 FTC. There needs to be greater coordination to ensure
8 that these complaints are followed up on by the carriers,
9 with the aggregators, and with the third-party service
10 providers.

11 On disclosure, a consumer who notices a
12 questionable charge on their phone bill may have a hard
13 time recognizing it, even if they actually see it. And
14 we know that consumers generally are not noticing this to
15 begin with, but when they do see it, there needs to be a
16 better way for them to recognize it as cramming.

17 In my opinion, they would be more likely to
18 recognize a suspicious charge as cramming if the charge
19 was listed under the name of the third-party service
20 provider. So, A, disclosure rules that are considered
21 should require that the third-party service provider name
22 be the one that's listed first on the bill, followed by
23 the aggregator, if the aggregator is going to be
24 mentioned at all. In this way, we think that the
25 consumer can better recognizing the cramming.

1 is a business model that's going to be shown to be based
2 on deception of consumers.

3 And the way to address that, I think, is
4 basically by outlawing it. I think you'll see that in --
5 and I would not be surprised to see that in legislation
6 coming forward, the basically just saying a blanket
7 outlawing of third-party billing on the landline side.

8 And on the mobile side, I think the picture is
9 much less clear. Obviously, text-to-donate services are
10 hugely beneficial and non-profits, as demonstrated by the
11 response to the Haiti earthquake for organizations like
12 the Red Cross. As things like mobile wallets and credit
13 cards become more tightly integrated with the mobile
14 phone, I wonder will billing via the mobile phone go the
15 same as billing the landline phones, so in a sense as
16 your credit card account and a mobile wallet is really
17 the payment mechanism and simply the mobile is just a way
18 to access that, will actually putting charges for
19 services on a mobile bill become as obsolete as how I
20 think that third-party billing on the landline side will
21 become. So, it's tough to say right now.

22 It's also a little more difficult, I think, to
23 regulate that on the wireless side, because they are more
24 loosely regulated in general than the landline phone
25 service. So, I think this puts more of an onus on the

1 FTC to ensure that billing via the mobile platform is
2 conducted in a fashion that doesn't deceive consumers.
3 At the very least, I think the FTC should be asking
4 carriers to ensure that the processes they've implemented
5 on the landline side to control cramming be implemented
6 on the wireless side, as well. And of course a more
7 aggressive approach would be simply to require that a
8 third-party billing block be an option offered to
9 consumers on the wireless at service inception.

10 So, those are just a smattering of the
11 solutions to this problem. And, again, I want to thank
12 the FTC for having us here, and I look forward to
13 answering the questions.

14 MS. GREISMAN: Thank you, John. And thanks
15 again to each of you. I've got a number of questions,
16 and we did have question cards that had been circulated
17 and collected in the back. Interesting, most of them are
18 not questions, so I just want to read some of the
19 statements so that we have a complete record to work
20 with.

21 One just says require written authorization
through the U.S. F1fSha0iTD-.il.S.r,j/eceiit c 8f-5.7 TDs0 TD0 Tc(2

1 opt in with a notarized statement?

2 Eliminating third-party billing will cut the
3 time and money the government spends and eliminate
4 cramming. There are a couple of others which we'll get
5 to later.

6 Let me start out asking a few questions. We've
7 got a good 15 minutes, so I will be able to open up to
8 everyone in the room.

9 Elliot, point of clarification: Is your -- is
10 the bill that's been passed limited to wireless -- to
11 wireline billing, and did --

12 MR. BURG: It's limited to wireline.

13 MS. GREISMAN: And was there consideration as
14 to whether to expand it to wireless?

15 MR. BURG: No, I'm sure you heard -- or I think
16 you may have addressed the differences between wireless
17 and landline expectations in your program. We didn't
18 feel -- I mean, I think one thing that was clear, the
19 alliance that we had with the telephone company would
20 have been very difficult to replicate in the wireless
21 area. I find it difficult to believe that we would have
22 had that unanimity.

23 I actually have some other things that I wanted
24 to mention. But that's my brief answer.

25 MS. GREISMAN: Okay, before we come back to

1 you, Keith, can you follow up, because at one point you
2 suggested that it was different but perhaps the same
3 rules of the road should apply were blocking to be
4 enacted.

5 MR. VANDEN DOOREN: Sure, I mean --

6 MS. GREISMAN: Can we use the mic, please?

7 MR. VANDEN DOOREN: Well, all I meant by that
8 was aside from the -- whatever technical differences
9 there are, and I'm not sure there are that many
10 differences, but be that as it may, I don't see why you
11 could not have similar type initial block on wireless as
12 well as the landline.

13 MS. GREISMAN: Would anyone else like to
14 comment on that?

15 MR. JONES: I'll just make a -- just a quick
16 point. And I wasn't entirely clear on this earlier when
17 I spoke, but the Committee's investigation is limited to
18 landline telephone bills. And we have focused on the
19 landline side first because the billing system developed
20 in the 1990s, and there's been plenty of time for a
21 record to develop for us to understand how well that's
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1 we're still sort of waiting to see how this goes to
2 determine what we'll do on that.

3 MR. GURIN: I would also say I think there
4 is -- we also have to stay very clear on the difference
5 between mandatory blocking and the option for blocking.
6 I mean, generally we're -- I think most of us are in
7 favor of consumers having options for how they get
8 service, so if wireless companies wanted to offer people
9 the option to block third-party charges, then that seems
10 like a reasonable thing to explore.

11 But I think the kind of blocking of most third-
12 party charges that Vermont and other states are
13 considering for wireline, John, as you said, I think with
14 wireless it's much more complex because I think there are
15 clearly third-party charges on the wireless side that are
16 legitimate, whereas with wireline that's less clear.

17 MS. GREISMAN: Elliot, let me -- I'm sorry, go
18 ahead, John.

19 MR. BREYAULT: The one issue that you have, I
20 think, with an opt-out regime on third-party billing is
21 that if it's intended -- the opt-out regime is intended
22 to control cramming. The problem lies in that cramming
23 is inherently deceptive. We know that consumers tend to
24 overlook these charges on their bills, often for months
25 and sometimes years at a time.

1 And, so, it's -- by putting an onus on the
2 consumer to recognize the cramming and then ask for the
3 block, I think you just leave the field open to
4 unscrupulous actors who do want to cram on the wireless
5 side. So, this is why I think that, you know, the third-
6 party block should be allowed at service inception --
7 should be recommended at service inception, if not made
8 the default when a consumer signs up for service.

9 Certainly, I think, you know, it -- Erik
10 referenced that, you know, you have now a very strong
11 record of cramming on the landline side to work with. On
12 the wireless, you obviously don't have that record at
13 this point because it's only been widely embraced in the
14 past decade. But I think, you know, and as well you do
15 have a demonstrated record of services that absolutely
16 legitimately bill via the wireless side, and the text-to-
17 donate I mentioned is one. There are others.

18 So, I think the real key is going to be how do
19 you allow third-party billing for the good actors but
20 still keep out the bad actors who just want to cram on
21 your phone bill in a way that doesn't require consumers
22 to spot the cram to begin with and then ask for the
23 block.

24 MR. GURIN: Yeah, and I just want to reinforce
25 that this goes back to the notice of inquiry that we put

1 you know, the registry idea has a certain appeal to it
2 because most consumers have signed up for the Do Not Call
3 registry, but I'm not sure that a registry to opt out of
4 something that they should not be charged for in the
5 first place is -- I'm not sure that that is going to be a
6 very useful tool.

7 I think the proactive protection of the
8 consumer from that -- from the charge would be much more
9 effective than requiring the consumers to voluntarily go
10 and sign up to opt out of it. As has been demonstrated
11 by numerous speakers today, most consumers don't even
12 know that they can be charged on their phone bill by
13 third-parties. So, you know, if you were to have a
14 registry, I think you would need really significant
15 consumer education to let consumers know that they can be
16 charged and then they'd have to call -- then they'd have
17 to opt out on the registry. I think that's kind of a
18 backwards way of going at it.

1 complaints in the last year. We took -- we've had a
2 number of settlements now, eight settlements with
3 merchants, we have many more in the pipeline.

4 And this is eight out of hundreds and hundreds
5 of merchants, most of whom are never going to see an
6 enforcement action because we can't pursue them all. If
7 we total up the number of individuals and companies that
8 were billed by those eight merchants, it's almost 6,000.
9 Now, this is eight out of hundreds of companies, and this
10 is 6,000 in relation to 72 complaints.

11 But it's really not apples and apples. The
12 6,000 should be multiplied by, you know, whatever factors
13 pull all the merchants in. So, we're talking about just
14 a huge reservoir of unseeing, unknowing people out there
15 who are never going to complain because they don't know
16 it's happening.

17 The second thing I wanted to say is I know that
18 the Rockefeller committee looked at this in connection
19 with another issue, discount membership programs. And
20 that's the question of usage, that is, people that are
21 billed on their phone bills for services offered by these
22 various merchants, what are they getting, and are they
23 actually using what they're getting.

24 What we're seeing for business customers is
25 that the service that is most often offered is online

1 yellow pages directory services, which is, first of all,
2 in the internet/Google age, I don't know why a company
3 would want to order that, but how would anybody know that
4 it's out there anyway? So, business can go on for years
5 not knowing that in the -- in the online world somewhere
6 there's some kind of listing for them that doesn't really
impact their local business anyway. That's the problem when

1 complete ban on third-party billing, and I'm wondering if
2 you mean that literally or if you mean something more
3 like what Vermont did and in particular are you talking
4 about no collect calls, no inmate calls, no direct-dial
5 toll?

6 MS. GREISMAN: Keith, do you want to take the
7 first stab?

8 MR. VANDEN DOOREN: Yeah, I don't think that --
9 I don't want to speak on behalf of my office. I have to
10 speak on behalf of myself on this one. I don't think
11 that we necessarily have to ban those. I mean, I think
12 it would be appropriate to possibly go along the lines of
13 what Vermont has done in their legislation. But for the
14 most part, yeah, I want to ban all third-party charges
15 pretty much.

16 MS. GREISMAN: Anyone else?

17 MR. BREYHAULT: Yeah. You know, I think that
18 the usage question comes into play here. If you're
19 thinking about services that you want to ban, I think the
20 Vermont bill is a good place to start, but I think you
21 should also look at whether or not these -- if it is a
22 collect call or operator-assisted service or a third-
23 party toll charge that's being used, you know, I think
24 it's incumbent on the LEC to look and see how is this
25 charge actually being used and, you know, and the LEC and

1 honestly regulators to say is this a service that passes
2 the sniff test. And if it's not, I think it could very
3 easily be wrapped into a prohibition similar to what
4 Vermont has passed.

5 MS. GREISMAN: And I'll add as an additional
6 point in the Nationwide litigation, those were all billed
7 as collect calls, more than \$30 million worth, not a
8 single call had been placed.

9 Other questions? Erik.

10 MR. JONES: Well, just let me make a particular
11 point about that from what we've seen, as well. So, as I
12 mentioned earlier, we're not in the phase yet where we're
13 going to be considering specific solutions, but what we
14 are seeing, because we're trying to find -- we've seen a
15 lot of bad actors on the third-party billing space, but
16 we have -- we have seen some -- there are some legitimate
17 actors out there, as well. We've seen the -- for
18 instance, satellite television companies use LECs in
19 order to place third-party charges on bills.

20 And -- but the one thing that we're seeing is
21 the LECs and the third-party -- a lot of the third-party
22 companies are repeatedly telling us that, well, this is a
23 great benefit to our customers, it's customer or consumer
24 convenience, they really enjoy having this, and I just
25 want to point out that we're just not -- we're not seeing

1 that.

2 And when we -- we've spoken to small telephone
3 companies throughout the country who have just stopped
4 doing third-party billing because they could not get
5 their cramming issues under control, and they're not
6 getting calls from their customers saying why on earth
7 did you stop doing third-party billing. I think what's
8 happening is people are either not aware that it ever
9 happened in the first place or they're happy they don't
10 have to deal with the cramming that's occurring on their
11 bills anymore.

12 MS. GREISMAN: Sir?

13 MR. DAVIS: Yes, Tom Davis, senior citizen.
14 I'd just like to make a comment. I look at this as a
15 win/win, and the reason I see that, if you eliminate
16 third-party billing, all of the manpower and the money
17 that's going into chasing these crooks and prosecuting
18 and watching them will go away if you eliminate third-
19 party billing. You'll only have to worry about the
20 wireless companies after that.

21 And, plus, all the money you save, all the
22 homeowners and all the customers are going to save money,
23 too. So, you can't lose with this solution. And I just
24 wanted to make that comment.

25 MS. GREISMAN: Thank you.

1 Other questions?

2 MR. AUGUSTINO: Hi, Steve Augustino from
3 Kelley, Drye & Warren. I've got a question: There are a
4 number of the solutions -- virtually, I guess, all of the
5 solutions -- seem to occupy -- seem to come from an
6 assumption that consumers either don't read their
7 telephone bills or don't find their telephone bills very
8 helpful to them.

9 And, Joel, I know you mentioned in your
10 presentation that the FCC is looking at improving its
11 truth-in-billing rules, which require a separate section
12 for this. So, I'd like to hear from the panelists on why
13 you think -- why you've sort of given up on the idea of
14 improving telephone bills or believing that a more useful
15 bill will help solve this problem.

16 MS. GREISMAN: Joel?

17 MR. GURIN: Well, we have not given up on that
18 concept, so I'll let someone else answer that.

19 MR. VANDEN DOOREN: Well, let me jump in here
20 real quick. A couple of things about the bills -- and by
21 the way, I know -- I haven't been in this the whole
22 decade, but most of the decade, looking at different
23 bills from different carriers. And the improvements that
24 I'm seeing are not what I would consider clear and
25 conspicuous, meaningful, and, you know, giving consumers

1 a chance to really see this, particularly when the
2 consumers are not expecting to get charged.

3 I mean, they have no idea that they've signed
4 up for something, so they're not scrutinizing it line by
5 line. You got a 15-page bill that comes in and you're
6 looking through all the lines and usually what I know of
7 the carriers is that these third-party charges come
8 towards the end of the bill. So, you got to go through
9 10, 12 pages of stuff to get there.

10 The third-party charges, I don't know which
11 carrier does this, maybe they all do it, but they have a
12 little squiggle. I mean, it's a very fine-point squiggle
13 that nobody knows what it means until you get to the back
14 of the bill and you see this third-party charge. I mean,
15 it's just not workable. And I think, you know, what
16 Senator Rockefeller said, it's just time to stop the
17 cramming. It's just -- you got to stop it, period.

18 MS. GREISMAN: Erik?

19 MR. JONES: I can add something, and let me
20 preface this with saying that this is me speaking and I'm
21 not speaking on behalf of the Committee. But based upon
22 what we've seen, I don't think we can disclose our way
23 out of this problem. The charges are or have been --
24 they're on the phone bills. I mean, the FCC did truth-
25 in-billing rulemaking in the late '90s, and the charges

1 are on there if you're looking for them.

2 And as Keith mentioned, if you're a customer of
3 a telephone company and you don't understand that your
4 telephone number can be used as a credit card, you're not
5 going to be looking for random charges in the first
6 place. And, secondly, comparing this back to the
7 investigation that we did with respect to the abusive
8 online marketing practices we were seeing last year, in
9 those circumstances, the charges were appearing on your
10 credit card statement or your checking account, and
11 people still didn't see it. And that's a situation where
12 people are actually more frequently looking at it to find
13 new charges because they're using their credit card on a
14 probably daily basis.

15 So, fixing the problem on the back end just
16 doesn't -- I don't -- it's probably not going to get us
17 there to put an end to the problem.

18 MS. GREISMAN: One last question.

19 MR. BREYAUULT: Can I fill up on that real
20 quick?

21 MS. GREISMAN: Briefly, please.

22 MR. BREYAUULT: Sure. The one thing I would add
23 to that, as well, is that the problem with relying on
24 consumers to be checking their phone bills is that not
25 only does the phone bill remain long and confusing often,

1 Division and of the other FTC employees who have worked
2 so hard to put this event on.

3 This morning, we heard about some, you know,
4 truly impressive law enforcement efforts reflecting
5 significant commitment of prosecutorial resources. We
6 heard about states that have brought literally dozens of
7 cases involving cramming. We heard about some great FTC
8 cases. In fact, the FTC has brought about two dozen
9 cases involving cramming, in which the dollar amounts
10 were in the hundreds of millions of dollars involved.

11 We also heard about criminal law enforcement
12 efforts. We heard about efforts to deal with problems in
13 Pennsylvania; and we also heard about instances in which
14 both criminal and civil prosecutors have worked closely
15 together to try to deal with the problem of cramming.
16 You know, in the world of prosecutors and prosecutions,
17 that's pretty much everything you can get. States, feds,
18 criminal, civil all working together. They've used all
19 their resources, and as we've heard over and over again,
20 the problem persists.

21 As much as I'd like to say we've done it, it's
22 been taken care of, law enforcement's fixed the problem,
23 clearly that's not the case here. We heard, for example,
24 about a recently filed case, the case recently filed by
25 the FTC, called Inc21. The case is interesting for a

1 couple of reasons. First of all, it demonstrated, again,
2 that cramming remains a problem. And, secondly, it
3 demonstrates what I would characterize as the adding-
4 insult-to-injury problem, that only our consumers, and
5 I'm going to add and echo a point that Elliot made, that
6 these are consumers who are not just, you know, your mom
7 and your dad and you, but they're also businesses,
8 including some fairly sophisticated businesses.

9 I mean, what we heard about with the insult-to-
10 injury problem is not only are consumers being faced with
11 charges that they didn't authorize, charges they didn't
12 expect to see, but, secondly, they're being charged for
13 things they don't want and, in fact, are completely and
14 totally bogus. So, to add insult to injury, they're
15 being charged for things that nobody in their right mind
16 could possibly use. We heard just a minute ago about
17 yellow page charges. You know, that's an insult-to-
18 injury problem.

19 Now, we also talked this morning a bit about
20 mobile. And if there's a flashing red light saying
21 "warning, warning, cramming is a problem here" with
22 regard to landlines, it's clear that in the mobile arena
23 it's more of a yellow light. There's a caution sign. It
24 may be that there is something that needs to be done, it
25 may not be.

1 Clearly, there are some important and
2 significant features that are involved in the mobile
3 world that we don't see in the landline world. I think
4 John mentioned one of those, for example, with the text-
5 to-donate area, clearly something that has shown itself
6 to be highly valuable and much, you know, consumers
7 really like that kind of service.

8 So, while in the landline world, it's clear
9 that cramming, unauthorized charges by third-party are a
10 huge problem, it's less clear that in the mobile world we
11 can safely charge into it with the solution that would
12 look anything like what we might do in the landline
13 world.

14 Now, I was also struck by the fact that this is
15 not a situation in which industry has sat on its hands.
16 Industry has clearly made a significant effort to try to
17 address the problem. It has taken steps to detect,
18 monitor, and prevent cramming because the industry, too,
19 suffers losses when crammers scam consumers. So,
20 industry has not -- this is a problem that affects
21 industry clearly and directly.

22 Industry has, in fact, you know, taken
23 significant efforts. But given the enormous amount of
24 consumer injury and the relative ease with which crammers
25 have skirted the steps that industry has taken, it's

1 clear that these efforts have come up short. Crammers
2 and scammers, which inadvertently I created a rhyme
3 there, I didn't mean to, have figured out ways to

1 Disclosures on the phone bills, whether they're adequate.
2 Disclosures at the time consumers initiate their
3 services, whether they're adequate. Whether the kinds of
4 disclosures consumers get are meaningful to them. Do
5 they get information about the vendor that's offering the
6 service? Do they get information about the service
7 they're actually purchasing, the price of the service?
8 Should those kinds of disclosures be listed on a separate
9 place on the phone bill? Should they be larger, more
10 prominent? Should they be given at various times over
11 and over again?

12 Again, there appears to be a lot that could be
13 done in the area of disclosures and exploring
14 disclosures. Whether that would be effective or not, I
15 think, is something we talked about in the last panel,
16 but certainly it merits further discussion.

17 Finally, we heard some fascinating discussions
18 about legislative solutions. Elliot Burg talked about
19 Vermont's new solution that just prohibits third-party
20 billing, but we also heard some people who I think, by
21 landlines with some carve-outs, but we also heard some
22 people, I think, who suggested that maybe that goes too
23 far. And there was some, you know -- and, so -- but
24 clearly that's another area that merits significant
25 attention, significant thought, something we all will be

1 thinking about.

2 So, I want to just close with a couple of final
3 comments. First, one thing I was struck by today was
4 there was very little finger pointing. People didn't say
5 it's your fault; no, it's your fault, which I think is
6 significant. What I take away from that is a sign that
7 we've reached a point at which everybody pretty much
8 agrees there is a significant problem here. And everyone
9 is interested in engaging in a search for constructive,
10 meaningful solutions, solutions that are effective,
11 sensible, and will actually help consumers prevent the
12 kinds of losses that we heard about today.

13 The FTC wants to be part of that search. We
14 want to work with the Commerce Committee; we want to work
15 with the FCC; we want to work with the states; we want to
16 work with industry; we want to work with consumer groups
17 to try to find ways to prevent this problem. Because I
18 think as our senior citizen representative back here
19 said, really, is it a good -- is it sensible for the
20 Federal Government and the states to continue to expend
21 large amounts of enforcement resources on this effort
22 when there might be better solutions out there if we all
23 work together at them. So, the FTC wants to be part of
24 that effort.

25 And, finally, I just want to -- as part of that

1 effort, I want to just mention one final little note. If
2 you are listening to this or hearing about this or if
3 you're here in the room and you have additional comments
4 about things that we could do, we would love to hear from
5 you. You can file comments on the public record for this
6 event through May 31st, and we'd love to get your
7 comments, your suggestions, expand on what you've heard,
8 criticize what you've heard, but let us know what you
9 think we can do with regard to cramming. We'd much
10 appreciate it.

11 And with that, I think we're done. I thank all
12 of you again for being here today.

13 **(Applause.)**

14 **(At 4:10 p.m., the workshop was concluded.)**

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