PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

"Cramming on Wireless Phone Bills:

A Review of Consumer Protection Practices and Gaps"

Before the

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

I. Introduction

Chairman Rockefeller, Ranking Member Thune, auto-pay their bills and therefore may not routinely inspect them. And many consumers do not even receive the services for which they are being charged.

Mobile cramming is a significant problem that threatens to undermine confidence in the that a company must obtain a consumer's express, informed consent before placing charges on their bills – which applies to the mobile environment just as it does to brick-and-mortar companies.

In addition to

II. Landline Cramming

As this Commission has recognized the issue of unauthorizedine

- *Tatto, Inc. & Bullroarer, Inc*. In this case, the FTC alleged that a widespread mobile

charges, which were often buried in their phone bills, including, in at least one consumer's case, on page 18 of the consumer's bill.[25] Consumers who discovered the charges widely reported that they had never heard of Wise Media or signed up for the services; the FTC alleged that consumers were simply billed without authorization.[26] In November 2013, a court entered a stipulated order with a judgment for more than $10 million and a ban that prohibits Wise Media from placing charges on mobile phone bills altogether.[27]

The Commission is litigating two similar actions against content providers. In *FTC v. Acquinity Interactive, LLC*, the Commission alleges that crammers sent text messages promising free $1,000 gift cards and iPads as a way to deceive consumers into "confirming" their phone number and entering PINs on a website; this resulted in consumers being signed up for unwanted premium text messaging services and incurring charges of $9.99 per month on their mobile phone accounts.[28] In another case, against MDK Media, Inc., the Commission alleges that a content provider similarly used the lure of "free" gift cards to collect consumers' phone numbers and crammed consumers for subscription services such as horoscope alerts.[29]

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[25] Memorandum in Support of Motion for Temporary Restraining Order, at 6, 10-11, *FTC v. Wise Media, LLC*, No. 1:13-cv-1234-WSD (N.D. Ga. Apr. 16, 2013) [hereinafter "Wise Media TRO Memo"].

[26] *Id.* at 6-9.

[27] Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendants Brian M. Buckley and Wise Media, LLC, at 4-6, *FTC v. Wise Media, LLC*, No. 1:13-cv-1234-WSD (N.D. Ga. Nov. 22, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/cases/131121wisemediabuckleystip.pdf.

[28] Amended Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. Acquinity Interactive, LLC*, No. 14-60166-CIV (S.D. Fla. June 16, 2014), *available at* http://www.ftc.gov/system/files/documents/cases/140707revenuepathcmpt.pdf.

[29] Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. MDK Media, Inc.*, No. 2:14-cv-05099-JFW-SH (C.D. Cal. July 3, 2014).

Earlier this month, the Commission filed suit against T-Mobile USA, alleging that it unlawfully charged consumers for unauthorized monthly text message subscriptions offered by third-party merchants.[30] The complaint alleges that T-

A number of lessons can be drawn from these actions, as well as the enforcement actions brought by our state law enforcement partners.[33] First, many entities have been able to cram charges onto mobile phone accounts using similar practices, and the amount of money at stake has been substantial. The Wise Media, Jesta Digital, and Tatto/Bullroarer cases alone involved settlements totaling more than $160 million.

Second, the level of consumer complaints and refund requests has understated the overall harm. Carriers have received a large number of complaints and refund requests related to third-party charges on mobile accounts, but the evidence indicates that many consumers do not notice the unauthorized charges, which often are buried in their mobile phone bills and, as alleged in the T-Mobile matter, appear under non-descriptive headers mixed in with charges for phone services.[34] Further, consumers with prepaid mobile phone accounts do not receive a bill at all; unauthorized charges are simply deducted from their available balance of minutes.

Third, even when consumers notice unauthorized charges and have requested refunds, they have reported difficulties obtaining refunds from carriers. Many complain that carriers refuse to give more than two months' worth or other limited amounts of refunds, even if consumers learn that crammed charges have appeared on their bills for longer periods of time.[35] In other instances, carriers have told consumers to contact the merchant for a refund, a request that the merchant often denies.[36]

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[33] State law enforcement actions are discussed in more detail at pages 11-12 of the Mobile Cramming Report, *supra* note 7. The fact patterns described by the states are similar to those described in the Commission's actions.

[34] *See* Mobile Cramming Report, *supra* note 7, at 14-15, 17-18.

[35] *Id.* at 14, 33.

[36] *See* Wise Media TRO Memo, *supra* note 25, at 11-12; Mobile Cramming Report, *supra* note 7, at 14.

commercial transactions.[38] Direct carrier billing, in contrast, is expected to continue growing, and it appears likely to supplant Premium SMS as the preferred mode of carrier billing. Regardless of the type of carrier billing involved, it is important for companies to provide basic consumer protections.

Providing consumers the option to block third-party charges

The Commission has advocated that mobile providers give consumers the option to block all third-party charges from their mobile phone accounts.[39]

Strategies for Detecting and Preventing Mobile Cramming

Industry participants have adopted a range of strategies to attempt to detect and prevent mobile cramming. The staff report discusses many of these in detail and recommends best practices for improvement. These strategies address two key issues: avoiding deceptive practices that lead to unauthorized charges on mobile accounts, and ensuring that consumers are providing express, informed consent to third-party charges on mobile accounts.

The staff report notes that merchants are responsible in the first instance for ensuring that their practices – including any advertising, marketing, and opt-in processes – are not deceptive, pursuant to the FTC Act. Further, information about price is important to consumers and should be disclosed clearly and conspicuously before charging a consumer’s telephone account for a good or service.[41] Thus, at a minimum, pricing information should be on the same page and immediately next to the purchase or buy button, entry of a PIN, or other invitation for a consumer to agree to a charge for a product or service. Additionally, advertising and purchase confirmation screens should clearly disclose that the charge is being billed to a specific telephone account. While industry guidelines have in the past focused extensively on the text-message based Premium SMS opt-in process, the basic consumer protection principles outlined in the report should apply regardless of the type of carrier billing used.

The staff report also recommends that carriers and billing intermediaries should campaign containing deceptive advertising, or discovers the merchant engaged in unauthorized billing on landline phones, the carrier or intermediary should closely monitor other campaigns run by that third party or its affiliates to ensure compliance.[42] Carriers and intermediaries can use monitoring techniques that compensate for known tactics that fraudsters use to evade detection of deceptive advertisements and sign-up processes. Industry participants also can adopt a policy of terminating serious and repeat offenders.[43]

Additionally, the report recommends that industry take stronger steps to ensure that consumers have opted-in to charges as represented by merchants. In Premium SMS, mobile carriers typically have relied on the merchant's representation – passed on by the billing intermediary – that a consumer opted-in to a charge. However, as the enforcement actions described above demonstrate, those representations are often unreliable. One option is to move toward more centralized control of the consumer opt-in process and authorization records, which appears to be the trend for at least some part of the industry.[44]

Finally, the staff report notes that monitoring consumer refund requests, and taking appropriate action when there are indications of unauthorized charges, can be a highly effective means of detecting and stopping cramming. Businesses providing other payment mechanisms use similar approaches to root out unauthorized charges. For example, credit card networks typically investigate merchants with chargeback rates of 1%, a threshold that is less than one-

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[42] Mobile Cramming Report, *supra* note 7, at 26-27.

[43] While there are costs to effective monitoring, there are also substantial benefits to both industry and to consumers. Industry participants can lower expenses related to the processing of refund requests and handling of customer complaints. And consumers avoid being crammed with unauthorized charges.

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Consumer Dispute Protections and Refunds

The Commission has explained that mobile carriers should provide a clear and consistent process for customers to dispute suspicious charges on their mobile accounts and obtain reimbursement.[47] And indeed, FTC enforcement actions show that it is difficult for consumers to obtain refunds, and that refunds often are limited to only some months' worth of charges, even when consumers discover they incurred crammed charges for a longer time period.

activities are terminated for unauthorized charges, in order to allow them to request a refund if appropriate.

V. Conclusion

Thank you for the opportunity to provide the Commission's views on mobile cramming. The Commission is committed to protecting consumers from mobile cramming and we look forward to continuing to work with the Committee and Congress on this important issue.