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Testimony

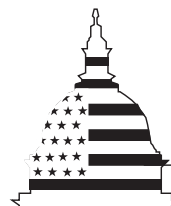
Before the Committee on Small Business,
U.S. Senate

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TELECOMMUNICATIONS

Overview of the Cramming
Problem

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G A O

Accountability * Integrity * Reliability

Mr. Chairman and Members of the Committee:

We are pleased to be at this hearing on Internet-related cramming directed at small businesses. As you know, Mr. Chairman, cramming is the inclusion of unauthorized, misleading, or deceptive charges on a consumer's telephone bill. Telephone companies can cram consumers by adding unauthorized charges for telephone-related services, such as call messaging. Cramming can also involve third-party vendors, who offer products and services that are unrelated to telephone services, such as live or recorded information about the stock market, sports, or products; chat lines and dating services; club memberships; and services such as Internet Web site designs.

Our statement today is based on our July 1999 report for Senator Susan M. Collins, Chairman of the Senate Permanent Subcommittee on Investigations, along with updated information that we obtained earlier this month at your request.¹ Details of our scope and methodology are found in appendix I. We will discuss three topics: (1) the extent of cramming complaints, (2) state and federal regulatory initiatives to protect consumers from cramming, and (3) state and federal enforcement actions against companies engaged in cramming. We will also mention actions being taken by major regional telephone companies to curb cramming.

In summary:

Although there is no central source for the number of confirmed cramming cases nationwide, we were able to gather information on consumers' complaints about cramming from state and federal regulators and major regional telephone companies. Overall, we found that consumers' complaints to state authorities about cramming rose dramatically from about 850 in 1996 to nearly 20,000 in 1998. While only 3 states reported receiving cramming complaints in 1996, the total increased to 36 states by 1998. At the federal level, cramming complaints became the fourth most common type of written complaint received by the Federal Communications Commission (FCC) and the second most common type of complaint received by the Federal Trade Commission (FTC) during 1998. Four major regional telephone companies reported to us that they received a combined total of about 160,000 unconfirmed cramming complaints during 1998, and a fifth company reported substantially more than that number during 1998. The picture for 1999 is a mixture of declines

¹Telecommunications: State and Federal Actions to Curb Slamming and Cramming (GAO/RCED-99-193, July 27, 1999).

and increases, depending on the data source. Both FCC and FTC are reporting declines in their complaint rates, as are all of the major regional telephone companies. However, the situation at the state level remains disturbing. Of the 38 state public utilities commissions we contacted this month to obtain updated information on their cramming complaints, 18 reported declines in the number of complaints received, but 20 reported either increases or no changes in the number of complaints received. In addition, 23 of the 38 commissions noted that small businesses were being charged for Web page designs and other Internet services that were never authorized.

Both state and federal agencies are taking steps to protect consumers from cramming. Most state public utilities commissions told us that they provide consumers with information on ways to prevent cramming and have administrative procedures for resolving complaints about telephone billing. In addition, 18 of the 38 state public utilities commissions we contacted this month reported enacting or proposing new rules designed to combat cramming. At the federal level, FCC has developed consumer information about cramming and streamlined the process by which consumers can file complaints. In addition, FCC adopted a new order in April 1999 requiring telephone companies to format their bills so that consumers can more easily identify any unauthorized charges. Key parts of this order are scheduled to become effective on April 1, 2000, though some outstanding issues raised by members of the industry have not been resolved. FTC also provides information to consumers about cramming and takes their complaints. In October 1998, FTC proposed new rules for combating cramming that, among other things, would require a consumer's express authorization before charges other than for local or long-distance calling could be placed on the consumer's telephone bill and would allow the consumer to dispute any unauthorized charges. FTC plans to issue a final rule this winter.

In the area of enforcement, public utilities commissions and attorneys general in 16 states reported to us that from 1996 through 1998, they completed 25 enforcement actions against companies or individuals for cramming violations, resulting in over \$3.5 million in penalties and customer restitution. Eight states also reported initiating 22 enforcement actions for cramming that had not been finalized when we conducted our survey in early 1999. This month we learned that, since the beginning of 1999, 13 state attorneys general have reported completing an additional 22 enforcement actions, none of which were included in our July 1999 report. These actions resulted in at least \$460,000 in penalties and customer

restitution. As of mid-October 1999, FCC had taken one enforcement action against cramming, and was working with FTC on another case. FTC has taken nine enforcement actions that have resulted in injunctions, restraining orders, and at least \$52 million in consumer credits and restitution.

FCC and FTC are also working with the states and telecommunications industry to curb this abuse. For example, in 1998, FCC sponsored a workshop with industry representatives to develop a set of “best practices” for combating cramming that telephone companies could use in developing their own anticramming procedures. The major regional telephone companies recently reported that they have a variety of measures in place to combat cramming, including several of the “best practices” developed at the FCC-sponsored workshop. FTC has also sponsored public workshops with telecommunications representatives, consumer groups, FCC officials, the National Association of Attorneys General, and others to address cramming and provide additional consumer education.

Background

Cramming is the inclusion on consumers’ telephone bills of charges that they did not knowingly authorize. Unauthorized charges can originate in a variety of ways. For example, a consumer may call a vendor’s advertised number to receive information or a service. Having obtained the consumer’s name and telephone number, the vendor may then levy a hidden or deceptive charge, even a recurring monthly charge, that the consumer did not know about and did not authorize. A consumer’s name and telephone number can also be obtained through sweepstakes entry forms, which may include some obscurely worded fine print authorizing charges to be placed on the consumer’s telephone bill. Some vendors apparently have simply lifted names and numbers from telephone directories to charge businesses for nonexistent services.

In order to have charges placed on a consumers’ telephone bills, vendors typically use the services of companies called “billing aggregators,” which bundle billing information from many vendors. Billing aggregators contract with telephone companies to have the vendors’ charges included as part of the consumers’ telephone bills.

The format of telephone bills can make it hard for consumers to recognize that they have been crammed, especially when the charges are identified only by nondescript phrases, such as “monthly fee,” “membership fee,”

or “service charge.” The bills may not even clearly identify the names of the vendors charging for these services, making it difficult for consumers to contact them directly to have the charges explained or removed.

Both state and federal agencies are responsible for protecting consumers from cramming and for taking regulatory and legal enforcement actions against entities engaged in this abuse. At the state level, public utilities commissions are responsible for regulating intrastate telephone services and resolving consumers’ complaints, while attorneys general are responsible for resolving consumers’ complaints about unfair and deceptive marketing practices. At the federal level, FCC’s authority is focused on preventing cramming by common carriers (telephone companies) engaged in common carrier activities, while FTC’s authority is focused on preventing cramming by companies that are not common carriers, such as third-party vendors that charge for their services through telephone bills. The Congress has, in some limited circumstances, granted FTC concurrent authority with FCC to establish rules concerning certain areas of telephone billing and collection.

Consumers who are the victims of cramming can attempt to resolve the problem by directly contacting their telephone company or the vendor involved. They can also file a complaint with their state public utilities commission or their state attorney general’s office. These two state-level bodies may attempt to resolve the complaint informally, or they may take formal regulatory or legal action, as authorized by state statute, against the offending company. In addition, consumers can send complaints about cramming to both FCC and FTC. Each complaint that FCC receives is sent to the appropriate company. The company in turn sends its response to the complaint to both FCC and the affected consumer. On the basis of these complaints, FCC investigates patterns of cramming and takes enforcement actions when appropriate. FTC uses the cramming complaints it receives, along with complaint data provided by state-level sources and other contributors to its complaint database, to take law enforcement actions against individuals and companies engaged in this abuse.

Cramming Complaints to State and Federal Authorities

The number of cramming complaints received by state and federal agencies increased dramatically from 1996 through 1998 (see table 1). In 1996, only three states reported receiving complaints about cramming. In 1997, 16 states received a total of 1,188 cramming complaints. By the end of 1998, 36 states had received 19,543 complaints about this abuse. The situation is similar at the federal level. FCC and FTC have seen cramming

emerge as a major problem as the number of cramming complaints to both agencies sharply increased from 1997 to 1998. In 1998, cramming became the fourth most common cause of written complaints received by FCC and the second most common cause of complaints received by FTC.²

Table 1: Number of Cramming Complaints Reported to State Public Utilities Commissions, FCC, and FTC for Calendar Years 1996-98

Calendar year	Cramming complaints received by state public utilities commissions	Cramming complaints received in writing by FCC ^a	Cramming complaints received by FTC ^b
1996	852	0	221
1997	1,188	0	3,173
1998	19,543	4,558	9,827

^aA consumer may call FCC's National Call Center with either an inquiry or a complaint. While FCC keeps track of inquiries and complaints received by the Call Center for trend and analytical purposes, it did not, until recently, take action until a consumer had submitted a written complaint, accompanied by bills and any other supporting documentation. These FCC numbers reflect written complaints only.

^bThe numbers for FTC include complaints received by mail, telephone, and the Internet.

Sources: State public utilities commissions' responses to GAO's survey and data from FCC and FTC.

The numbers in table 1 do not capture complaints about cramming that consumers tried to resolve by dealing directly with their telephone company or third-party vendor without filing a complaint with state or federal authorities. At present, there is no central source of data on verified cases of cramming. During early 1999, we contacted major regional telephone companies to obtain data directly from them on the number of cramming complaints they received during 1998.³ The results we obtained were incomplete and highly qualified. Several companies told us that they did not begin tracking cramming complaints until the middle of 1998 and that, in any event, their numbers represented unverified complaints, which may prove to be unwarranted upon investigation. Four companies reported a combined total of about 160,000 unverified

²The data in table 1 have some important qualifications. The complaint numbers do not equate to verified cramming incidents, since a complaint could prove to be unwarranted upon investigation. For example, a customer might misinterpret a legitimate service charge and mistakenly complain about being crammed. Also, adding state and federal complaint numbers together could result in some double-counting because consumers can complain to both state and federal authorities about a single cramming incident.

³The regional companies consider the cramming data provided to us to be proprietary. To protect the confidentiality of the data, we agreed to report only cumulative totals for all companies. The companies included Ameritech, Bell Atlantic, BellSouth, SBC Telecommunications, and US WEST. We did not attempt to gather data from hundreds of smaller local service providers.

cramming complaints for all or part of 1998, and a fifth company reported substantially more than that number.

The situation for 1999 is a mixture of declines and increases, depending on the data source. At the federal level, FCC reported 2,929 cramming complaints from January 1999 through September 1999, and FTC reported 5,153 cramming complaints. For both agencies, these numbers for the first 9 months of 1999 represent a downward trend from 1998 levels. Major regional telephone companies are also reporting declines in cramming complaint levels, according to information they provided to FCC this summer. The companies attributed their improved numbers to actions they have taken to crack down on cramming.

At the state level, the complaint numbers remain disturbing. We contacted 38 state public utilities commissions this month to obtain updates on their cramming complaints. While 18 states reported declines in the number of complaints received, 20 states reported either increases or no changes in the number of complaints received.⁴ In addition, 23 of the 38 states noted that small businesses were being charged for Web site designs and other Internet services that were never authorized. The offices of attorney general in North Carolina and North Dakota have begun to track this type of cramming as a separate category.

Consumer Protections Against Cramming

Both the states and the federal government have taken action to help protect consumers against cramming. Most states have some protections against cramming, and many are making efforts to alert consumers to cramming and provide guidance on dealing with this abuse. At the federal level, FCC adopted a new order in April 1999 ("Truth-in-Billing") to combat cramming. This order requires telephone bills to clearly identify all charges and highlight any changes in service so that consumers can more easily spot unauthorized charges. FTC has also proposed regulatory changes that would address cramming by, among other things, requiring a consumer's express authorization to charge for services other than local or long-distance calling, enhancing the consumer's right to dispute

⁴The public utilities commissions reporting declines in cramming complaint levels were Alabama, Arizona, Delaware, Florida, Idaho, Illinois, Indiana, Maryland, Michigan, Montana, Nevada, Ohio, Oregon, Pennsylvania, Texas, Vermont, Wisconsin, and Wyoming. The public utilities commissions reporting increases in cramming complaint levels were Iowa, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Virginia. The public utilities commissions in Arkansas, Connecticut, Hawaii, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, and Washington reported that the number of cramming complaints they received in 1999 was about the same as they had received in 1998.

unauthorized charges, and imposing liability on those engaged in cramming.

State-Level Consumer Protections Against Cramming

In early 1999, 41 state public utilities commissions reported to us that they had initiated some actions to help prevent cramming. These actions included providing consumers with educational brochures and information on Internet sites and establishing procedures for handling cramming complaints. Some state commissions reported that they refer cramming complaints to FCC. In addition, a few state commissions reported taking additional actions to increase their ability to protect consumers from cramming. For example, during 1998, Illinois passed legislation that in part enhanced the enforcement actions the Illinois Commerce Commission can take to protect customers from telephone cramming. Specifically, the legislation gave the Commission the authority to fine an offending company up to \$1,000 for each repeated and intentional cramming violation as well as revoke the company's certificate to provide service in the state. In addition, the Tennessee Regulatory Authority implemented new regulations in 1998 against cramming that require the prior consent of an authorized individual before charges for additional services can be placed on the telephone bill. The Authority can assess a maximum fine of \$100 per day, per offense, against a company engaging in cramming. The California Public Utilities Commission and the Indiana Utility Regulatory Commission also recently implemented rules detailing the types of information required before charges for other services can be added to a consumer's telephone bill. In addition, 18 of the 38 public utilities commissions we contacted this month stated that their states had either enacted or proposed new rules to combat cramming.⁵

Federal Consumer Protections Against Cramming

Both FCC and FTC have undertaken rulemakings to provide consumers with greater protections against cramming. They have also increased their consumer education efforts and are making it easier for consumers to file complaints about this abuse.

FCC's "Truth-in-Billing" Order to Help Combat Cramming

According to FCC, over 60,000 consumers made inquiries to the agency in 1998 about the confusing format of their telephone bills. FCC believes that this confusion is contributing to the rise in cramming because consumers are having difficulty detecting unauthorized charges. On April 15, 1999, FCC adopted its "Truth-in-Billing" order, which establishes principles and

⁵These states include Alabama, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Montana, New Hampshire, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington.

guidelines to make telephone bills easier for customers to understand.⁶ The new rule, which FTC commented on and supports, requires that telephone bills (1) clearly identify who is responsible for each charge, (2) include full and nonmisleading descriptions of the services being billed, and (3) provide telephone numbers for consumers to call for more information about specific charges on their bills.

This new order was originally to go into effect earlier this year. However, in September 1999, FCC announced that the implementation date for parts of the order was being postponed until April 1, 2000. This date applies to compliance with the requirement that common carriers highlight new service providers and identify deniable and nondeniable charges. All other deadlines under the rule, including a requirement that common carriers separate charges on bills by service provider, take effect 30 days after the notice's publication in the Federal Register on October 12, 1999. FCC stated that the postponement came about because the Office of Management and Budget raised concerns that the original implementation date could impair the ability of some telephone companies, especially small and medium-sized ones, to ensure that their computer systems were Year 2000 compliant.⁷ FCC has also received several petitions for waivers, stays, and other forms of relief from the guidelines adopted in the order and continues to work to resolve these issues.

FTC's Proposed Revision to the "Pay-per-Call" Rule

FTC is also taking action to combat cramming. Under a proposed revision to its "Pay-per-Call" rule, FTC has laid out a fourfold approach to cramming.⁸ First, a consumer's express authorization generally would be required for purchases unrelated to local or long-distance telephone service that are billed to the consumer's telephone account. Second, a vendor would be prohibited from placing monthly or other recurring charges for pay-per-call service on a telephone bill without prior

⁶"Truth-in-Billing and Billing Format," CC Docket No. 98-170, FCC 99-72 (rel. May 11, 1999).

⁷The Year 2000 problem is rooted in how dates are recorded and computed. For the past several decades, systems have typically used two digits to represent the year, such as "98" for 1998, to save electronic storage space and reduce operating costs. In this two-digit format, however, 2000 is indistinguishable from 1900. Because of this ambiguity, date-dependent software, firmware, and hardware could generate incorrect results or fail to operate altogether when processing years beyond 1999.

⁸Under the authority of the Telephone Disclosure and Dispute Resolution Act of 1992, FTC adopted its Pay-per-Call rule to curtail the unfair and deceptive practices engaged in by some pay-per-call businesses. 16 C.F.R. part 308. At that time, pay-per-call services were generally provided via "900" numbers that were billed directly to a consumer's local telephone company. Since then, "telephone-billed purchases" have expanded beyond simply "900" numbers. The Telecommunications Act of 1996 authorized FTC, through its rule, to extend the definition of the term "pay-per-call service." On October 30, 1998, FTC published a notice of proposed rulemaking to revise the rule. 63 Fed. Reg. 58524. Part of this revision focuses on cramming.

agreement with the customer billed for the service. Third, consumers would have the legal right to dispute unauthorized charges “crammed” onto their telephone bills and to have these charges removed. Finally, dispute resolution protections would be provided for all transactions that resulted in the placement of nontoll charges on a customer’s telephone bill. Violators would be liable for civil penalties, currently \$11,000 per violation. FTC officials currently expect to issue a final rule sometime this winter.

Federal Complaint-Reporting and Education Initiatives

FCC and FTC are augmenting their regulatory efforts with expanded consumer outreach and education, which are key elements in combating cramming. FCC is making it easier for consumers to submit complaints about cramming. In the past, FCC required consumers to submit complaints in writing before it took action on them. Since January 1999, consumers have been able to file complaints electronically via FCC’s Internet Web site. And in June 1999, operators at FCC’s National Call Center started taking consumers’ complaints over the telephone and electronically submitting them for action directly to FCC’s Common Carrier Bureau. In response to each complaint, the Bureau electronically issues an “Official Notice of Informal Complaint” to all companies identified in the complaint.⁹ A served company has 30 days to respond to FCC. FCC is also automating some of its old manual processes for handling consumers’ complaints in order to shorten its response time. In addition, FCC is bolstering its customer education efforts by making information about cramming available on its public Internet Web site. FCC is in the process of establishing a centralized Consumer Information Bureau to be more responsive to consumers’ concerns and requests for information. It is also in the process of establishing a centralized Enforcement Bureau to better marshal its resources for taking actions against entities that violate its rules.

FTC has expanded its efforts to educate consumers about telephone billing abuses by creating a Web page on cramming and has formed a telecommunications working group to develop consumer education publications. These materials emphasize that a consumer does not owe a payment for unauthorized (crammed) services just because the call for the service may have been placed from his or her home. In 1999, FTC added a toll-free number for consumers to call with complaints about cramming and other abuses and to obtain information on how to avoid such problems. FTC’s database system, called the Consumer Sentinel, also

⁹The issuance of a notice of informal complaint does not necessarily indicate wrongdoing by the served company.

contains details on over 210,000 consumer complaints on all topics, including complaint data provided by a variety of organizations, such as Better Business bureaus, state attorneys general, the National Fraud Information Center, Phone Busters, and private companies. FTC uses the database to develop enforcement strategies against companies engaged in abusive trade practices, including cramming.¹⁰

State and Federal Enforcement Actions Against Cramming

Both state and federal enforcement actions against companies engaged in cramming have resulted in financial penalties, restitution, and discontinued operations.

Completed State Enforcement Actions, 1996-98

As of the end of 1998, 16 states had successfully completed 25 enforcement actions against companies and individuals engaged in cramming that have resulted in over \$3.5 million in fines and other penalties. In each of these cases, the public utilities commission and/or the attorney general's office participated in a formal hearing against the violator that resulted in a final disposition or resolution of the case.

Usually, the accused company or individual was ordered to resolve the complaint by providing consumers with some restitution, paying a penalty, or providing an assurance that the cramming would stop. As shown in table 2, the 16 states ordered companies to pay at least \$1.7 million in customer restitution¹¹ and \$1.8 million in penalties and fines.¹² These completed enforcement actions affected at least 42,000 consumers. These totals, however, understate the actual outcomes of these actions because the survey responses of state public utilities commissions and attorneys general did not always include the number of consumers affected or the amount of customer restitution and penalties involved.

¹⁰Over 170 law enforcement agencies in the United States and Canada also have access to this database to assist them in their own consumer protection efforts.

¹¹Customer restitution can include a complete or partial refund of the money consumers paid for unauthorized services.

¹²Penalties and fines include charges to cover the costs of court proceedings and investigations. In some cases, the penalties and fines were used to cover the costs of consumer education campaigns.

Table 2: Completed Enforcement Actions Taken by State Public Utilities Commissions and State Attorneys General for Cramming, 1996-98

State	Number of completed enforcement actions	Number of customers affected	Total amount of customer restitution reported	Total amount of penalties and fines reported
California	2	30,000 ^a	\$650,000	\$25,000
Florida	3	2	579	21,000
Georgia	1	^a		
Idaho	1	5	^b	1,500
Illinois	1	57	500,000	20,000
Kentucky	1	^a		2,000
Missouri	2	^a	^b	^c
New York	3	172	67,000 ^b	129,000
North Carolina	1	^a	^b	273,000
Oregon	3	^a		14,350
Pennsylvania	2	^a	^b	1,002,500
Rhode Island	1	14	400	35,000
South Dakota	1	1	229	
Tennessee	1	11,878	^b	280,000
Virginia	1	^a	435,000	15,000
Wisconsin	1	^a	40,000	25,000
Total	25	42,129	\$1,693,208	\$1,843,350

^aThe number of customers affected was not provided in at least one of the reported actions.

^bRestitution was ordered to be paid in at least one of the reported actions, but the specific amount was not provided.

^cA penalty was ordered to be paid in at least one of the reported actions, but the specific amount was not provided.

Sources: State public utilities commissions' responses to GAO's survey and responses of state attorneys general to a survey from the National Association of Attorneys General.

In addition to these completed cases, three state public utilities commissions and five state attorneys general reported initiating 22 other enforcement actions against entities engaged in cramming. These actions had not been finalized when we conducted our survey in early 1999.¹³ This month we learned that, since the beginning of 1999, 13 state attorneys general reported completing an additional 22 enforcement actions, none of

¹³The state public utilities commissions in Florida, Maine, and West Virginia, and the attorneys general in Illinois, Missouri, New Jersey, Ohio, and Wisconsin reported the pending cramming enforcement actions.

which were included in our July 1999 report.¹⁴ These actions resulted in at least \$460,000 in penalties and customer restitution. Four of the 38 public utilities commissions we contacted this month also reported five more pending enforcement actions for telephone cramming.¹⁵

Federal Enforcement Actions Against Cramming

At the federal level, both FCC and FTC have taken enforcement actions against entities engaged in cramming. FCC and FTC, however, operate under different statutory schemes and generally have different remedies available.¹⁶ As a regulatory agency, FCC has several tools for achieving its enforcement goals. These include administrative remedies, such as revoking a company's operating authority, issuing a cease and desist order, and assessing civil monetary penalties (forfeitures). As a law enforcement agency, FTC pursues cramming in federal district courts, seeking temporary and permanent injunctive relief and, ultimately, restitution for affected customers. FTC can also take administrative enforcement action, such as convening a trial before an administrative law judge.

FCC has brought an enforcement action against one common carrier, Long Distance Direct, Inc. (LDDI) for violations related to both cramming and slamming. (Slamming involves switching a consumer's telephone service provider without the consumer's authorization.) LDDI allegedly changed consumers' long distance service providers to LDDI and billed consumers for "membership fees" simply on the basis of the consumers' calls to a "psychic hotline" service. In some cases, there was no evidence of contact with the affected consumer.

¹⁴The attorneys general in Arkansas, Florida, Idaho, Illinois, Kansas, Michigan, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, and Texas reported these completed enforcement actions.

¹⁵The state public utilities commissions in Florida, Mississippi, North Carolina, and Tennessee reported the most recently pending cramming enforcement actions.

¹⁶Under the Communications Act of 1934, as amended, FCC has general authority to prohibit carriers that provide interstate services (telephone companies) from engaging in unjust and unreasonable practices, such as cramming. 47 U.S.C. 201(b). FTC, under the Federal Trade Commission Act, as amended, has the authority to pursue law enforcement actions against unfair and deceptive acts or practices. 15 U.S.C. 45(a). Common carriers (i.e., telephone companies) subject to the Communications Act of 1934, as amended, are exempt from FTC's statutory mandate under the Federal Trade Commission Act. 15 U.S.C. 45(a)(2). FTC has taken the position that the statutory common carrier exemption does not shield the non-common-carrier activities of an entity that may otherwise engage in some common-carrier activities under another statute.

FTC has brought nine cramming cases to court since April 1998 that have resulted in at least \$52 million in consumer credits and restitution.¹⁷ These cases involve 22 companies, including billing aggregators and vendors. In eight cases, FTC has sought and successfully obtained preliminary or permanent injunctions, or temporary restraining orders, to stop these companies' cramming activities. In addition, FTC is seeking restitution for the unauthorized charges that these companies collected from consumers. According to FTC officials, these unauthorized charges range from \$4.7 million in one case to almost \$40 million in another case. Of the nine cases brought to district court, four cases have been settled with substantial redress. The case involving Interactive Audiotext Services, Inc., resulted in approximately \$11 million in consumer restitution and compliance provisions, including a 3-year record-keeping requirement for the company. In the second case, involving American Telnet, Inc., the parties have agreed to \$39.7 million in consumer restitution and changes in their business practices. In the third case, Hold Billing Services, Ltd., agreed to \$1.6 million in consumer redress. The fourth case, which involved unauthorized charges to small businesses for Web site services that were purportedly free for a trial period, was just settled earlier this month with the company, U.S. Republic Communications, Inc. The other five cases were still in various stages of discovery and negotiation as of October 1999. Additional details on these cases are found in appendix II.

Officials at both FCC and FTC told us that they have several additional investigations in progress, including one joint investigation. They expect to take more enforcement actions against cramming before the end of this year. They also told us that they are working with their state counterparts to efficiently combat cramming. For example, the two federal agencies share complaint data with each other and the states. FCC and the National Association of Regulatory Utility Commissioners are also working to coordinate their enforcement actions and jointly disseminate educational materials on telecommunications issues affecting consumers. Both FCC and FTC officials told us that they regularly participate in conference calls with representatives from the state public utilities commissions and attorneys general, respectively, to discuss telecommunications issues, including cramming.

¹⁷FTC's Fighting Consumer Fraud: The Case Against Cramming, June 1999, discusses its actions against cramming.

Industry Actions to Curb Cramming

FCC and FTC officials also noted that they are working with members of the telecommunications industry to curb cramming. For example, in May 1998, FCC sponsored a workshop, attended by representatives of the telephone industry, to develop a set of voluntary guidelines on “best practices” in combating cramming that individual companies could consider implementing. These best practices cover issues such as screening products and service providers to identify programs that may be deceptive or misleading, establishing procedures for verifying that charges have been authorized by the consumer, and establishing a dispute resolution process. In addition, FTC has sponsored public workshops with industry representatives, consumer groups, FCC officials, the National Association of Attorneys General, and others to address cramming and provide additional consumer education.

Earlier this year, several major local and long-distance telephone companies provided us with information on initiatives they have undertaken to deal with cramming. Among them are the following:

- Using brochures, press releases, and Web sites to educate customers on what constitutes cramming, what their rights are, and what steps they can take if they have been victims of cramming.
- Limiting billing to vendors engaged in telecommunications-related services.
- Eliminating billing for certain products and services susceptible to abuse by third-party service providers, such as prepaid calling cards and debit cards.
- Eliminating billing for recurring monthly service charges associated with pay-per-call 900 number services or charges for services accessed via 800 and 888 numbers, which are widely associated in the public’s mind with toll-free calling.
- Refusing to bill on behalf of programs that use sweepstakes or “check box” methods to sign up customers.
- Requiring information providers to provide clearer billing descriptions, toll-free numbers for complaints, and procedures for handling complaints.
- Requiring information providers to provide a notarized affidavit attesting to the validity of their descriptions and billings; requiring billing aggregators to sign an affidavit certifying that the third-party charges they are submitting are authorized by the consumer.

The companies maintain that measures such as these (which reflect several of the FCC workshop’s “best practices”) have been effective in

combating cramming, as evidenced by the generally declining volume of cramming complaints that they reported receiving during 1999.

Mr. Chairman, this concludes my prepared remarks. We would be pleased to respond to questions that you and Members of the Committee may have at this time.

Contact and Acknowledgements

For information about this testimony, please contact Stan Czerwinski at (202) 512-7631. Individuals making key contributions to this testimony include John Finedore, Mindi Weisenbloom, Mike Volpe, Terri Russell, Martha Chow, Faye Morrison, Ed Warner, and James Sweetman.

Objective, Scope, and Methodology

Our objective for this testimony was to provide general background information on cramming and efforts to combat it. We based our testimony largely on the work we did for our recent report, Telecommunications: State and Federal Actions to Curb Slamming and Cramming (GAO/RCED-99-193, July 27, 1999). The objectives of that report were to describe the (1) number of complaints about slamming and cramming received by state and federal authorities, (2) types of protections implemented by state and federal authorities to increase consumers' ability to protect themselves against slamming and cramming, and (3) state and federal enforcement actions taken against slamming and cramming violations from 1996 through 1998.

To determine the states' actions to combat cramming, we administered a survey to the public utilities commissions in the 50 states and the District of Columbia early in 1999. This survey collected information on the types of consumer protections offered by the states, the number of cramming complaints received, and details on each of the formal enforcement actions taken by the commissions from 1996 through 1998. The National Association of Attorneys General collected similar information about formal enforcement actions taken by each state's attorney general. We assisted in collecting this information. In addition, we reviewed relevant FCC and FTC documents and met with officials of these agencies to discuss their efforts in developing regulations to combat cramming and their enforcement actions against those engaging in this abuse. We also contacted regional Bell operating companies and major long-distance companies for data on cramming complaints and descriptions of their initiatives to curb cramming.

During October 1999, we obtained updated information on cramming complaints and enforcement actions from FCC, FTC, and 38 state public utilities commissions. We also obtained an update on cramming enforcement actions reported by some state attorneys general to the Illinois Office of Attorney General. To update cramming complaint data from major regional telephone companies, we relied on their responses to a July 1999 request by FCC for information on their anticramming initiatives and current complaint levels.

Our initial review, performed from December 1998 through June 1999, and our October 1999 update were conducted in accordance with generally accepted government auditing standards.

FTC's Enforcement Actions Against Cramming

The Federal Trade Commission (FTC) protects consumers by taking law enforcement actions against unfair or deceptive acts or practices.¹ According to FTC officials, the Telephone Disclosure and Dispute Resolution Act (TDDRA) of 1992, as amended, gives FTC the authority to regulate all “telephone-billed purchases” that are distinct from charges for the transmission of local or long-distance telephone calls.² FTC seeks and obtains temporary restraining orders, preliminary injunctions, permanent injunctions, and other equitable relief, such as the appointment of receivers, to halt unfair or deceptive practices and to reserve the offending companies’ assets for consumer restitution.

Between April 1998 and October 1999, FTC filed nine cases against 22 companies for cramming violations. In some instances, FTC entered into court-approved settlements with the companies. Table II.1 provides details on the publicly filed enforcement actions that FTC took during this period.

¹Common carriers (i.e., telephone companies) subject to the Communications Act of 1934, as amended, are exempt from FTC’s statutory mandate under the Federal Trade Commission Act, 15 U.S.C. 45(a)(2). FTC has taken the position that the statutory common carrier exemption does not shield the non-common-carrier activities of an entity that may otherwise engage in some common-carrier activities under another statute.

²Under TDDRA, the term “telephone-billed purchase” includes any purchase that is completed solely as a consequence of the completion of a telephone call, or the subsequent dialing or comparable action of the caller. The term specifically excludes all “local exchange” or interexchange telephone service.

**Appendix II
FTC's Enforcement Actions Against
Cramming**

Table II.1: FTC's Publicly Filed Cramming Cases, as of October 1999

Company	Date of action	Amount of suspect billing	Status	Comments and additional information
Interactive Audiotext Services, Inc. Includes American Billing and Collection Services, U.S. Interstate Distributing, Inc.; and Allstate Communications (parent company).	4/22/98, in U.S. District Court for the Central District of California; amended filing on 5/28/98.	\$11 million	Permanent injunction; about \$11 million in restitution to consumers.	Settlement entered as final order; redress phase under way and changes required in business practices.
International Telemedia Associates, Inc. (ITA); and Online Consulting Group (vendor for ITA).	7/10/98, in U.S. District Court for the Northern District of Georgia.	\$17,100,000	Temporary restraining order with freezing of Online's assets and preliminary injunction; receiver appointed to manage Online.	Bankruptcy court has appointed a trustee for ITA; ITA is closed down and trustee is winding up its business affairs. Receiver is closing down Online after deciding that it could not be run as a lawful business.
Hold Billing Services, Ltd.; HBS Inc.; Avery Communications (all closely related companies that are aggregators); and Veterans of America Association, Ltd. (VOAA) (vendor).	7/16/98, in U.S. District Court for the Western District of Texas.	\$4.7 million	Permanent injunction on 9/22/99; \$1.6 million in consumer redress.	Settlement entered as final order.
Communications Concepts and Investments, Inc. d/b/a Crown Communications and Crown Communications Two, Inc.; and Global Collections, Inc. (Crown's in-house collection agency).	12/22/98, in U.S. District Court for the Southern District of Florida.	Not yet determined; formal discovery is under way.	Not yet determined.	Formal discovery and negotiations are under way.
Shared Network Services, LLC, d/b/a Shared Network Services and 1 st Page	6/7/99, in U.S. District Court for the Eastern District of California.	Not yet determined.	Stipulated preliminary injunction; discovery is under way.	Resolution not yet determined.
Wazzu Corporation	6/7/99, in U.S. District Court for the Central District of California.	Not yet determined.	Temporary restraining order; discovery is under way.	Resolution not yet determined.
American Telnet, Inc.	6/8/99, in U.S. District Court for the Southern District of Florida.	\$39.7 million	Permanent injunction; complaint and consent filed together.	The parties have agreed to \$39.7 million in forgiven charges and redress to consumers, and changes required in business practices.

(continued)

**Appendix II
FTC's Enforcement Actions Against
Cramming**

Company	Date of action	Amount of suspect billing	Status	Comments and additional information
Web Valley, Inc.; Profile National Business Directory, Inc.; National Business Directory, Inc.; Protel Advantage, Inc.; U.S. Protel	7/4/99, in U.S. District Court for Minnesota.	\$9 million	Preliminary injunction.	Resolution not yet determined.
U.S. Republic Communications, Inc.; T. Gary Remy	10/14/99, in U.S. District Court for the Southern District of Texas.	To be determined.	Complaint and final consent filed together.	Up to 124,000 consumers may receive redress as a result of this settlement; changes required in business practices.

Source: FTC

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