



COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

OFFICE OF OVERSIGHT AND INVESTIGATIONS
MAJORITY STAFF

**UNAUTHORIZED CHARGES ON
TELEPHONE BILLS**

STAFF REPORT FOR CHAIRMAN ROCKEFELLER
JULY 12, 2011

EXECUTIVE SUMMARY

In May 2010, Chairman Rockefeller launched an investigation into third-party billing on landline telephone bills. He opened the investigation because consumers had complained for years that they were finding mysterious charges on their telephone bills for services they had not purchased. To understand the scope and the severity of this problem, commonly referred to as “cramming,” the Senate Commerce Committee staff has conducted a wide-ranging investigation over the past year.

The evidence obtained through this investigation suggests that third-party billing is causing extensive financial harm to all types of landline telephone customers, from residences and small businesses, to government agencies and large companies. Over the past decade, telephone customers appear to have been scammed out of billions of dollars through third-party billing on landline telephones. Unauthorized third-party charges are a nationwide problem.

THIRD-PARTY BILLING AND THE RISE OF CRAMMING

Cramming is not a new problem. It began appearing in the 1990s, when telephone companies opened their billing platforms to an array of third-party vendors offering a variety of services. For the first time, telephone numbers became a payment method equivalent to credit card numbers. Consumers and businesses could purchase products or services with their telephone numbers and the charges for the services would later appear on their telephone bills.

While the telephone companies’ decision to open their billing platforms had the potential to benefit consumers and businesses, cramming quickly emerged as an unintended consequence. The rise of cramming was so significant in the late 1990s that federal authorities, consumer advocates, and telephone companies all agreed that changes to the telephone companies’ third-party billing systems were needed.

At the time, both the Federal Communications Commission (FCC) and the telecommunications industry advocated for a voluntary approach, rather than rulemaking or congressional action. The United States Telephone Association told Congress that the industry “needed flexibility to deal with cramming on a case specific basis” and that “mandatory guidelines or a one-size-fits-all approach would erode that ability.” Although mandatory requirements for telephone companies were discussed, the problem was addressed almost exclusively through voluntary guidelines. The only mandatory requirements placed on telephone companies at the federal level have been the FCC’s “Truth-in-Billing” regulations, which require disclosure of third-party charges on telephone bills.

Over a decade later, thousands of consumers still regularly complain to the Federal Trade Commission (FTC) and the FCC about cramming, while state and federal authorities continue to bring law enforcement actions against individuals and companies for cramming. These cases have shown that consumers continue to be scammed out of millions of dollars through cramming.

THE SENATE COMMERCE COMMITTEE'S INVESTIGATION

To understand the scope of the cramming problem, the Committee requested information related to third-party billing and cramming from telephone companies; state and federal regulatory agencies; companies that offer third-party billing as a method of payment; consumers, businesses, and government agencies that have been affected by cramming; and companies that specialize in auditing telephone bills.

The evidence obtained and analyzed by Committee staff suggests that third-party billing on landline telephones has largely failed to become a reliable method of payment that consumers and businesses use to conduct legitimate commerce. Rather, it created cramming, a problem of massive proportions likely affecting millions of telephone users and costing them billions of dollars in unauthorized third-party charges over the past decade. With the exception of legitimate third-party vendors that offer services like satellite television and long distance, third-party billing appears to be primarily used by con artists and unscrupulous companies to scam telephone customers.

The key findings of the Committee staff's investigation are the following:

Third-party billing is a billion dollar industry. Telephone companies place approximately 300 million third-party charges on their customers' bills each year, which amount to more than \$2 billion worth of third-party charges on telephone bills every year. Over the past five years, telephone companies have placed more than \$10 billion worth of third-party charges on their customers' landline telephone bills.

A substantial percentage of third-party charges are unauthorized. While Committee staff cannot determine precisely how many third-party charges are unauthorized, the evidence obtained through the investigation suggests it is a large percentage.

- Telephone customers with third-party charges on their telephone bills overwhelmingly reported that the charges were unauthorized. Committee staff has spoken with more than 500 individuals and business owners whose telephone bills included third-party charges. Not one person said the charges were authorized. Law enforcement agencies have reported similar findings when conducting surveys for their own cramming investigations.
- Committee staff is aware of hundreds of third-party vendors whose actions suggest they are engaged in cramming. For example, a company specializing in auditing telephone bills reported that over 800 different third-party vendors had placed unauthorized third-party charges on its clients' landline telephone bills.
- Committee staff has found hundreds of egregious examples of cramming. Third-party vendors have enrolled deceased persons in their so-called "services" and charged family members' telephone bills for it. They have charged telephone lines dedicated to fire alarms, security systems, bank vaults, elevators, and 911 systems. Senior citizens' telephones have been enrolled in webhosting services, even though they have never used

the Internet. A children's hospital was charged for a "celebrity tracker" e-mail service that provided "daily celebrity news feeds, photos, and videos." A national bank's telephone lines were charged for "credit protection plans." Third-party vendors even crammed unauthorized charges for voicemail services onto AT&T's own telephone lines.

Telephone companies profit from cramming. Over the past decade, telephone companies have generated over \$1 billion dollars in revenue by placing third-party charges on their customers' telephone bills. Since 2006, AT&T, Qwest, and Verizon have earned more than \$650 million through third-party billing. Verizon explained that it "receives a flat fee between \$1 and \$2 per charge for placing third-party charges" on its customers' bills. Because telephone companies generate revenue by placing third-party charges on their customers' bills, telephone companies profit from cramming. Documents reviewed by the Committee staff show that some telephone company employees feel financial pressure to approve third-party vendors even though the companies appear to be crammers.

Cramming affects every segment of the landline telephone customer base. Unauthorized third-party charges harm residences, small businesses, nonprofits, corporations, government agencies, and educational institutions. The Committee has accumulated thousands of examples of cramming on nonresidential telephone bills.

Examples of cramming on small business telephone lines. A small business that owns Popeyes and Krispy Kreme franchises reported that third-party vendors placed more than \$4,000 worth of charges on its telephone bills for electronic facsimile and other services it did not authorize or use. A small business owner in Nevada reported that seventeen different third-party vendors charged him over \$4,000 for online business listings, voicemail, identity theft protection, and streaming video services he did not authorize or use. A bicycle store owner in Illinois reported approximately \$1,500 of unauthorized charges for "virtual fax and voicemail" services she did not authorize or use.

Examples of cramming on corporate telephone lines. Large organizations are particularly susceptible to cramming because they often have thousands of telephone lines in hundreds of locations. Crammers appear to target them specifically. A national food chain reported over \$100,000 worth of unauthorized third-party charges on a yearly basis. Other companies provided similar figures. A national retail chain reported \$550,000 in unauthorized third-party charges on its telephone bills over the past decade. The retail chain estimates it has spent \$400,000 in resources battling unauthorized third-party charges.

Examples of cramming on government telephone lines. Local, state, and federal agencies also reported cramming on their landline telephone bills. The United States Postal Service would have paid almost \$550,000 in unauthorized third-party charges if it had not hired an auditor to examine its bills. The United States Naval Station in San Diego, California, reported its telephone bills included \$11,000 worth of unauthorized third-party charges in one quarter in 2009. Since November 2009, Los Angeles County has received \$306,000 in billing credits for unauthorized third-party charges on its AT&T

landline telephone bills. Los Angeles, Chicago, New York, and other large city governments also battled cramming charges.

Many third-party vendors are illegitimate and created solely to exploit third-party billing. Committee staff has found third-party vendors operating out of post office boxes, fake offices, and residences, with “presidents” that know nothing about their “companies.” One woman admitted that she became involved because “a friend said do you want to become president of a company.” Another “president” admitted that he did nothing more than sign his name to papers that were submitted to telephone companies.

Many telephone customers experiencing cramming did not receive help from their telephone companies. Although telephone companies said they instructed their representatives to assist customers with cramming problems, consumers and businesses frequently reported that the telephone companies were not helpful. Company representatives frequently stated incorrectly that telephone companies were “legally obligated to place the charges on their bills,” and that, “there was nothing they could do to help them.” Only after these consumers contacted the Better Business Bureau or their state attorneys general did their telephone companies provide assistance for many of them. Business and government offices had similar experiences. For example, an AT&T Senior Account Manager for the City of Tyler, Texas, stated, “Neither myself or my team can do anything to resolve these for you and this isn’t the first time we’ve been asked.” He added, “My former account Dallas County would have 20-30 per month...I wish, I really wish there was some way we could help but there is not.”

The telephone companies are aware that cramming is a major problem on their third-party billing systems. While telephone companies regularly tell their regulators and the media that their cramming complaint rates are low, internal documents reviewed by Committee staff show that the companies understand cramming is a major customer service problem. The companies have received hundreds of thousands of complaints using words like “fraud,” “scam,” “theft,” “hoodwinked,” “shocked,” “disgusted,” “upset,” “stealing,” “bad business,” “taking advantage,” “disappointed,” and “unethical” to describe their experiences with third-party billing. Furthermore, telephone companies deal with only a small fraction of the actual number of their dissatisfied, angry customers, because most customers either never realize they are being charged or they complain directly to third-party vendors. Over an eight month period in 2010, for example, more than 200,000 people directly called a set of related third-party vendors to cancel their services because they “did not understand,” “did not remember,” or “did not authorize” the charges. Over the same period, those third-party vendors only received 2,746 cramming complaints forwarded from telephone companies.

III. OVERVIEW OF THIRD-PARTY BILLING ON LANDLINE TELEPHONES

There are two types of third-party billing on landline telephones: (1) third-party billing where a vendor, such as a satellite television network or a large long distance provider, contracts directly with a telephone company to place charges on its customers' bills; and (2) third-party billing where the telephone company contracts with a "billing aggregator," or "clearinghouse," which maintains business relationships with hundreds of other smaller third-party vendors.

The Committee's investigation has focused on the latter arrangement because most third-party charges come through aggregators, and because consumer cramming complaints reviewed by Committee staff overwhelmingly relate to third-party charges placed through aggregators. As will be discussed in the section on "Illegitimate Third-Party Vendors," many third-party vendors that bill through aggregators appear to be created solely to exploit the weaknesses of the landline telephone third-party billing system.

A. The Third-Party Billing Ecosystem

When the Committee opened the investigation, Committee staff's understanding was that three types of companies play a role in third-party billing: third-party vendors, billing aggregators, and telephone companies.

Third-Party Vendors: Hundreds of different third-party vendors charge their customers for services through telephone bills. These companies claim to offer an array of services, including long distance, voicemail, online backup, online photo storage, roadside assistance, and electronic facsimile. To gain access to the telephone companies' third-party billing systems, they enter into contracts with billing aggregators. They also register directly with telephone companies and receive a carrier identification code ("sub-CIC") number.

Billing Aggregators: The FTC has explained that billing aggregators open "the gate to the telephone billing and collection system" and "act as intermediaries between the [third-party] vendors and the local phone companies" by "contracting with the local phone companies...to have the local telephone companies collect...charges from consumers."³⁰ Once the charges are collected by the phone companies, the billing aggregators, after taking their fee, pass the revenues back to their client vendors. A handful of aggregators manage third-party vendors' access to landline telephone bills. Aggregator names that appear commonly on phone bills are: ESBI, ILD Teleservices, OAN, Payment One, the Billing Resource, Transaction Clearing, and USBI.

Telephone Companies: Telephone companies control access to their customers' telephone bills and distribute the revenue generated from third-party charges. To place charges on telephone bills, a third-party vendor must first acquire a sub-CIC number and approval from a telephone company. Once a third-party vendor's charges appear on

³⁰ Federal Trade Commission, *Telephone "Crammers" Settle FTC Charges: Billing Aggregators Debited Phone Bills for Charges Consumers Didn't Authorize* (Aug. 6, 2001).

telephone customers' bills, the telephone companies, after collecting their fees, pass the revenue back to the billing aggregators, which then distribute the revenue to the third-party vendors. Committee staff has found that many telephone companies – from large national carriers like AT&T and Verizon to small independent carriers – place third-party charges on their customers' bills.³¹

FIGURE I—THIRD PARTY BILLING AS COMMONLY UNDERSTOOD

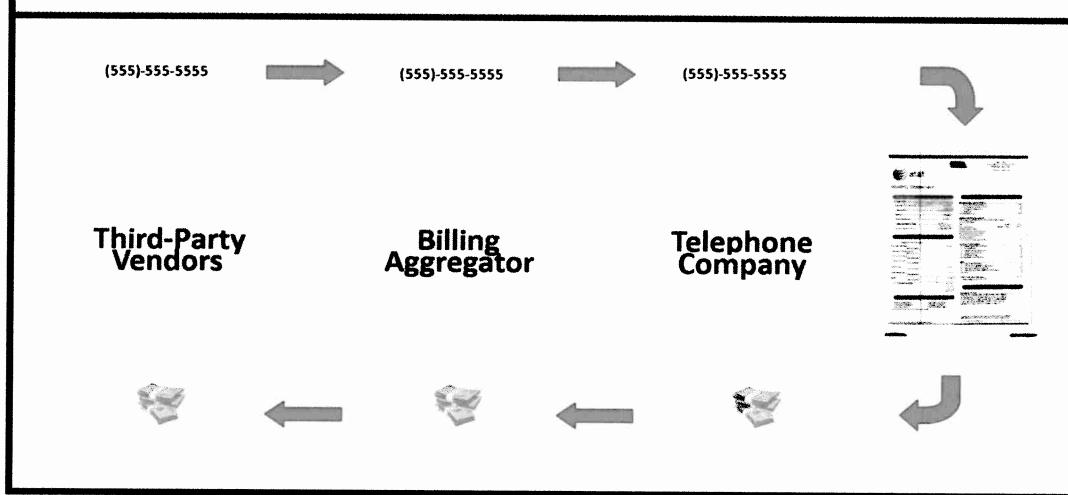
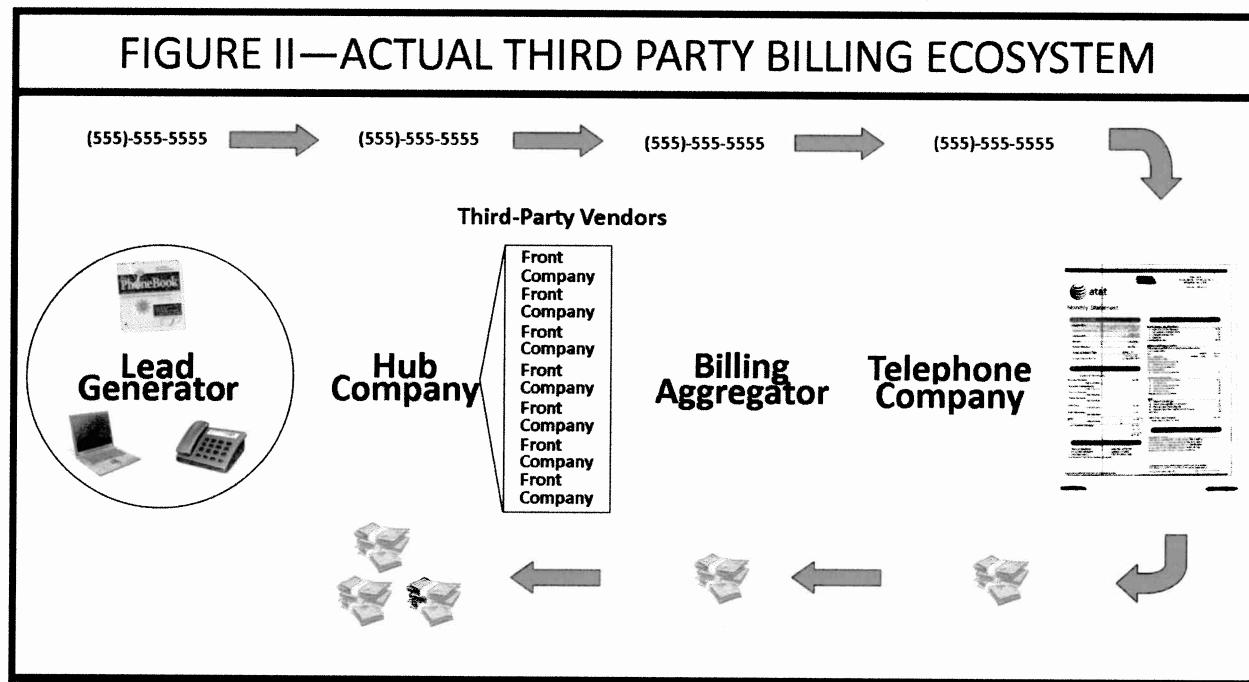


Figure I illustrates the third-party charge process as it is usually described by the involved parties. The third-party vendor allegedly sells a consumer a service and obtains the consumer's "authorization" to bill his or her telephone number. The vendor passes the number to a billing aggregator, which in turn passes the number on to the telephone company that provides the consumer's landline telephone service. The vendor's charge then begins appearing on the customer's telephone bill. Once a customer pays his or her bill, the telephone company collects the portion of the payment that covers the third-party charges and, after taking its fees for placing the third-party charges, distributes the revenue to the billing aggregator, which then distributes to the corresponding third-party vendor.

As Committee staff conducted the investigation, it became apparent that the actual third-party billing ecosystem is more complicated. Many third-party vendors are actually "front companies" for "hub companies" that handle every aspect of the vendors' business. In other

³¹ A number of smaller telephone companies do not allow third-party charges on their customers' bills. For example, the Shenandoah Telephone Company (Shentel) recently wrote Chairman Rockefeller that it eliminated third-party billing in 2007 after receiving cramming complaints from its customers. Letter from David E. Ferguson, Vice President – Customer Services, Shenandoah Telephone Company, to Senator John D. Rockefeller IV (July 5, 2011). The Western Telecommunications Alliance told Committee staff that some of its members terminated third-party billing "out of respect for their customers' dissatisfaction with being" crammed and due to "spending an inordinate amount of time and resources trying to get those charges removed from their customers' bills." E-mail message from Western Telecommunications Alliance to Commerce Committee Staff (July 11, 2011).

words, many third-party vendors do not actually provide the services they claim to provide in their applications to the telephone companies. Committee staff found dozens of examples of third-party vendors that were in fact controlled by hub companies.



The apparent purpose of hub companies is to game the third-party billing system. If a large number of consumers complain to telephone companies or law enforcement authorities about a particular third-party vendor, the hub company can simply shift additional enrollments to other third-party vendors it controls. When one larger company operates through multiple smaller third-party vendors, it is more difficult for telephone companies and other authorities to determine how much cramming is occurring and who is responsible for it. Part V of this report provides detailed information about hub companies Committee staff examined during this investigation.

Complicating matters further, Committee staff found evidence that hub companies outsource marketing and enrollment to companies called “lead generators.” Lead generators are paid to obtain customers’ “authorizations” to bill their telephone numbers. They pass the allegedly authorized telephone numbers onto the hub companies, which then pass the numbers to the billing aggregators under the names of different front companies. This arrangement invites abuse because lead generators are apparently paid based upon how many consumers they enroll, rather than for providing services or maintaining relationships with customers. Their practices will be discussed further in the next section of this report.

B. The Cost and Scope of Third-Party Billing

To understand the scope of third-party billing, the Committee requested financial information about third-party billing from eight providers of landline telephone service – AT&T, Verizon, Qwest, CenturyLink, Windstream, FairPoint, Frontier, and Cincinnati Bell. Based upon

third-party billing. In a complaint to the Better Business Bureau (BBB), an AT&T customer shared the following sentiment, which is also expressed in thousands of other complaints:

I am concerned for many like myself who really have to decide whether they are going to pay their bills or eat for the month. When I have tried [to contact] these fly by night companies who are bil[k]ing me with AT&T's blessing, I get the runaround or disconnected. This is very frustrating and it needs to stop. I never agreed to have AT&T allow third party billers to charge me for services I never ordered and do not want.³⁵

A. How Cramming Occurs

For cramming to occur, three separate actions are required: (1) a third-party vendor obtains the telephone number of a consumer who has allegedly purchased a service, (2) the third-party vendor submits that telephone number to a telephone company through a billing aggregator, and (3) the telephone company places the allegedly “authorized” charge for the third-party vendor on the consumer’s telephone bill. Because telephone companies do not have their own processes to determine if a consumer has “authorized” a charge, once a company engaged in cramming has obtained a consumer’s telephone number, it is a simple process to have the charge placed on the consumer’s telephone bill. As a result, at its most basic level, cramming is about obtaining telephone numbers.

Crammers obtain telephone numbers in one of two ways. They either obtain a consumer’s telephone number without ever interacting with the consumer; or they dupe a consumer, through abusive marketing, into providing his or her telephone number and “authorization.” When they are asked to provide proof that a consumer has “authorized” a charge, crammers routinely provide information that is inaccurate or insufficient to show that a consumer knowingly purchased the service.

1. No Consumer Involvement

In the 1990s, the GAO observed that “[s]ome vendors apparently have simply lifted names and numbers from telephone directories to charge businesses for nonexistent services.”³⁶ Through its investigation, Committee staff has obtained evidence showing that, over a decade later, third-party vendors continue to engage in similar practices. A third-party vendor needs nothing more than information that is publicly available, or that can be purchased from “lead generators,” to enroll consumers in its so-called services. Unlike credit cards, which consumers know to protect, telephone numbers are widely available. Once crammers have obtained this information, it is a simple process to submit those numbers to telephone companies.

³⁵ Better Business Bureau, Complaint Activity Report, Case No. 27102339 (June 29, 2009) (AT&T Doc. CST009711).

³⁶ General Accounting Office, *Overview of the Cramming Problem* (GAO/T-RCED-00-28) (Oct. 25, 1999).

Telephone customers frequently submit complaints to telephone companies, consumer advocates, and regulatory offices with proof that they did not provide their telephone numbers to the third-party vendors that placed charges on their bills. The following examples are representative of thousands of complaints reviewed by Committee staff.

Deceased Relatives Many telephone customers complained that third-party vendors provided the names of deceased relatives when asked who authorized the charges on their telephone bills. A telephone customer stated, “they informed me my deceased son, he died nine years ago, had signed me up for this service,”³⁷ while another stated, “they told me it [the service] was ordered by Jean W.—he has been deceased for 36 years.”³⁸ Another frustrated customer stated, “They informed me that my husband...had ordered the service and I would have to know his security information. When I explained that my husband died 13 years ago, they told me that I must have ordered it in his name.”³⁹

Incorrect Personal Information Telephone customers repeatedly complained that the information that third-party vendors provided as proof of authorization was incorrect. A Verizon customer complained that “it was done in our daughter’s name but with her actual name reversed, wrong e-mail address, wrong birth date, but with our correct home phone number and home address. Neither we nor she ever signed up for this service.”⁴⁰

A Connecticut resident complained that a third-party vendor called Billviaphone.com had his address wrong and had informed him that “Michael...had signed up online.”⁴¹ He explained that, “[t]here’s no Michael here, just Mark & Nancy.”⁴² In another complaint, a manager from the Oklahoma Corporation Commission contacted AT&T on behalf of an Oklahoma resident. She was “concerned” about the proof of enrollment that had been provided because it was not the information for the person who had been charged.⁴³

Unpublished Numbers Numerous businesses and government agencies told Committee staff they have incurred crammed charges on telephone lines that are dedicated to alarm systems, elevators, modems, and other lines that are not assigned to any employees. They stated that they do not believe their employees could have enrolled those telephone lines in any services because the telephone numbers for the lines are unpublished and unknown to employees. For example, a large, multistate bank sent Committee staff a spreadsheet showing the following examples of cramming since May 2010:

³⁷ Consumer complaint to Arkansas Attorney General (Dec. 14, 2009) (AT&T Doc. CST029520).

³⁸ Consumer complaint to Kansas Attorney General (Nov. 1, 2009) (AT&T Doc. CST030067).

³⁹ Consumer complaint to Oregon PUC (July 2, 2008) (Qwest Doc. QSC0015024).

⁴⁰ Consumer complaint to Verizon (Aug. 20, 2009) (Verizon Doc. VZ_003_002040).

⁴¹ Consumer e-mail to Better Business Bureau of Connecticut (Aug. 21, 2009) (AT&T Doc. CST009842).

⁴² *Id.*

⁴³ E-mail from Oklahoma Corporation Commission to AT&T employees (Feb. 9, 2010) (AT&T Doc. CST0219835).

- alarm lines incurred charges for directory listings, “eBusiness Marketing Materials,” “online business,” electronic facsimile, long distance plans, and Internet radio;
- an ATM line incurred charges for “Internet services;”
- remote call forwarding lines incurred charges for “Instant 411,” online coupons, directory listings, photo storage, electronic facsimile, monthly ringtones, IT support, Internet TV, and music downloads;
- a modem line incurred charges for voicemail;
- a data line incurred charges for music downloads;
- emergency call lines incurred charges for electronic facsimile and online diet services;
- equipment monitoring lines incurred charges for voicemail;
- a VoIP test line incurred charges for music downloads; and
- a facsimile line incurred charges for online entertainment news.

Another bank told Committee staff that it believes that much of the \$20,000 worth of cramming it incurred in the first several months of 2011 occurred on unpublished telephone numbers for modems, alarms, facsimile machines, and other telephone lines that are not assigned to individual employees. An office property company reported that it has incurred charges on telephone lines for elevators and alarms. The U.S. Naval Computer and Telecommunication Station in San Diego stated that the crammed charges it has incurred on central office trunk lines must be “100% fraud” because Naval personnel do not know the telephone numbers associated with those lines, the numbers are unpublished, and the numbers do not appear on caller identification records because they are not connection points for telephone calls.⁴⁴

Fake Internet Enrollments Telephone customers have repeatedly complained that they were told they enrolled for third-party vendors’ services via websites, even though they did not have a computer or access to the Internet. An AT&T Arkansas customer explained, “I was told it was ‘triggered’ online. I have no computer...and have never been on-line.”⁴⁵

This type of complaint frequently came from senior citizens or their caregivers. A Qwest customer complaining on behalf of her father was told “that it was an online order of some sort,” but she explained that “her father who lives in an assisted living facility...does not own, or [know] how to use a computer.”⁴⁶

In a particularly egregious example, a man complained on behalf of his 82 year-old mother-in-law about a third-party vendor called Talent & More LLC,⁴⁷ which charged her telephone number for a “web-hosting personal profile” allegedly marketed to “casting agents”

⁴⁴ Committee staff telephone interview with United States Navy personnel (May 2, 2011).

⁴⁵ Consumer complaint to Arkansas Attorney General (Dec. 18, 2009) (AT&T Doc. CST029539).

⁴⁶ Consumer complaint to Oregon PUC (Apr. 24, 2008) (Qwest Doc. QSC0014820).

⁴⁷ Letter to the Office of the Connecticut Attorney General (July 22, 2009) (AT&T Doc. CST 2622056).

1. Time and Money

The unauthorized charges that are crammed onto telephone customer's bills are typically between \$10 and \$50. These charges, although relatively minor if they occur only once, can quickly amount to significant losses for telephone customers. To maximize revenue, crammers charge consumers on a recurring monthly basis for their "services," so that the charges will continue as long as consumers fail to discover them.

Residences and small businesses affected by cramming have generally experienced losses in the hundreds and thousands of dollars.⁵⁹ Larger organizations, like government agencies and corporations, sometimes experience unauthorized third-party charges worth tens of thousands of dollars a year.⁶⁰ Because large organizations often have thousands of telephone lines in hundreds of locations, they are particularly susceptible to cramming.

For example, the United States Postal Service would have incurred over \$500,000 worth of unauthorized charges if it had not hired a company to audit its telephone bills, while a large food chain told Committee staff that it incurs approximately \$100,000 worth of unauthorized charges on a yearly basis.⁶¹ Even AT&T experiences cramming on its telephone lines. Committee staff confirmed that third-party vendors associated with one hub company crammed at least 80 of AT&T's own telephone lines with charges for services such as voice mail, sometimes for periods as long as 18 months.⁶²

Battling unauthorized third-party charges also costs telephone customers significant amounts of time, effort, and money. Telephone customers shared the following experiences in complaints, which are similar to those of thousands of other customers:

- A Qwest customer stated, "this is the 5th time that I have had charges added to my bill...[e]very time I have spent at least a half hour of my time getting these services removed...I'm sick of this."⁶³
- An AT&T customer expressed his frustration after he tried unsuccessfully to have third-party charges removed from his bill. He stated, "[t]his is the 2nd or 3rd time within about 4 years that something like this has happened to us with AT&T . . . where they arbitrarily

⁵⁹ See Appendix A, "Cramming Case Studies," for summaries of telephone customers' experiences with third-party billing and cramming.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 86 separate e-mails from AT&T employees to billing aggregator ESBI regarding cramming on 86 AT&T corporate telephone lines (dated Mar. 2, 2009 – Nov. 4, 2010) (produced to Committee by daData, Inc., without Bates numbers).

⁶³ State of Utah, Division of Public Utilities, Informal Complaint Report, Index No. 3343 (Aug. 3, 2010) (Qwest Doc. QSC0015631).

telephone companies. She receives a monthly check worth a few hundred dollars for serving as “president” of the company.¹⁰⁶

3. Low Rates of Usage

Committee staff obtained evidence from multiple third-party vendors showing that few, if any, of their “customers” were using the services for which the companies were charging them. These findings are consistent with those of other law enforcement inquiries into cramming. Low usage rates are strong evidence that consumers did not knowingly purchase the services and were not aware they were being charged for them.

“Voicemail” Services MySNS’s third-party vendors each charged telephone customers for “voicemail” services that were accessible only by dialing specific 1-800 telephone numbers. The Committee obtained MySNS’s telephone bill for December 2010, which showed that approximately 925 unique numbers dialed the 1-800 telephone numbers dedicated to “voicemail” services during the month.¹⁰⁷ At the time, at least 97,000 telephone customers were being charged for these services.¹⁰⁸ At best, less than 1% of the telephone customers charged for “voicemail” services used it in December 2010.

“Online Photo Storage” Services daData provided usage data for Coast to Coast Photo, Photo Cubbie, Residential Photo, and USA Photo House, which provided “online photo storage” and “100 prints per month” for \$14.95 per month. Of the 64,250 telephone customers that these third-party vendors enrolled in 2009 and 2010,¹⁰⁹ less than 2% loaded a digital picture to the websites.¹¹⁰

“Casual Online Gaming” Services With assistance from MORE International’s counsel, a counsel for the Committee enrolled in the “casual online gaming services” offered by EZPhoneBill, a third-party vendor associated with MORE, to determine whether enrolled telephone customers were using the company’s services. Committee staff had noticed that few, if any, “customers” appeared to be using its online gaming website, games.ezphonebill.com. Before Committee counsel accessed the website, the front page listed “No scores logged yet!” for its “All Time Top Scores,” even though it had enrolled more than 20,000 telephone customers in the service and generated almost \$1 million dollars by charging those customers \$14.95 per month.¹¹¹

¹⁰⁶ Committee Staff Telephone Interview (Feb. 9, 2011).

¹⁰⁷ MySNS Corporate Telephone Invoice (Dec. 11, 2010) (produced to Committee on Apr. 15, 2011).

¹⁰⁸ The number of enrolled customers is likely much higher, as MySNS only provided enrollment data for a subset of the third-party vendors that used the 1-800 numbers for voicemail services in December 2010.

¹⁰⁹ daData response to Questions 1(b), 1(j), and 1(k) (Apr. 1, 2011) (daData Doc. DAT158722).

¹¹⁰ Letter from Margaret Krawiek, Counsel to daData, to Senator John D. Rockefeller IV (Apr. 1, 2011).

¹¹¹ Letter from Linda Goldstein, Counsel to MORE International, to Erik Jones, Counsel to Senate Commerce Committee (Feb. 3, 2011).

5. Committee Staff Calls to the Third-Party Vendors’ “Customers”

The Committee obtained the contact information for thousands of the telephone customers who had been charged by third-party vendors that were related to daData, MySnS, and MORE International. At random, Committee staff called consumers who had allegedly purchased services from the following third-party vendors: BLVD Network, Total Protection Plus, MyInfoGuard, Coast to Coast Voice, Nationwide Assist Fax, TriVoice International, Agora Solution, MyBillingServices, Xoom Telecommunications, and EZPhoneBill.

Committee staff called approximately 1700 randomly selected “customers,” and spoke to over 500 of them about their experiences. Not a single individual or business owner reported that they had authorized the third-party vendors’ charges on their telephone bills. Telephone customers either reported that they had already found the unauthorized charges and had them removed, or they were surprised to learn that their telephone bills included third-party charges.

Staff calls to “customers” of Total Protection Plus, for example, resulted in clear evidence of cramming. This daData-controlled vendor allegedly “offers customers electronic fax capabilities with online data back-up voice messaging with ID theft protection, and stand-alone voicemail access.”¹¹⁶ daData informed the Committee that the Total Protection Plus “service” was marketed to individuals. The company provided the Committee the names, telephone numbers, and other information about customers who had allegedly purchased the service.

Although these documents identified the telephone numbers that were enrolled in Total Protection Plus as “Home Phone” numbers, Committee staff called dozens of the numbers and discovered that they belonged to government agencies and businesses. For example, some of the numbers belonged to a Taco Bell, a Wal-Mart, a Publix grocery store, the Broward County Sheriff’s Office, an emergency room, a Capital One bank, the Jacksonville Aviation Authority, a juvenile detention center, Prince George’s County Community Center, and the West Virginia Department of Highways. Documents daData produced to the Committee show numerous instances in which business and government offices complained that their telephone numbers had been enrolled in Total Protection Plus.

6. Enrollments and Financials

The third-party vendors related to daData, MySnS, and MORE International have enrolled millions of telephone customers in their “services” and have generated millions of dollars through recurring monthly charges. Over the past two years, daData-related third-party vendors enrolled over 800,000 telephone customers and generated more than \$50 million in revenue.¹¹⁷ As of April 2011, approximately 350,000 telephone customers were being charged by daData-related vendors on a monthly basis.¹¹⁸ Between 2007 and 2010, MySnS-related vendors enrolled 1,201,460 telephone customers and generated \$13 million in revenue.¹¹⁹

¹¹⁶ Lustigman Feb. 17, 2011 Letter, *supra* note 85, at 4.

¹¹⁷ daData response to Questions 1(b), 1(j), and 1(k) (Apr. 1, 2011) (daData Doc. DAT158722).

¹¹⁸ *Id.*

¹¹⁹ Letter from Joel Dichter, Counsel to MySnS, to Senator John D. Rockefeller IV (Jan. 19, 2011).