



COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

OFFICE OF OVERSIGHT AND INVESTIGATIONS
MAJORITY STAFF

**Cramming on Mobile Phone
Bills: A Report on Wireless
Billing Practices**

STAFF REPORT FOR CHAIRMAN ROCKEFELLER
JULY 30, 2014

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EXECUTIVE SUMMARY

For several decades, phone companies have allowed third-party vendors to charge consumers on their phone bills for goods and services unrelated to phone service, such as photo storage, voicemail, and faxes. This practice began with landline phone bills and continued on wireless phone bills as consumer use of mobile phones increased. Throughout this period, the industry has assured the public that its self-regulatory system is effective at protecting consumers from fraudulent third-party billing on their phone bills.

However, this Committee's 2010-2011 review of third-party billing practices on landline phones showed that widespread unauthorized charges – known as “cramming” – had been placed on phone bills and had likely cost consumers billions of dollars over the preceding decades.

In light of these findings, and emerging reports of cramming in the wireless context, the Committee subsequently began reviewing third-party billing practices on wireless phone bills.

This inquiry focused largely on third-party vendor charges placed through a system known as the premium short message service, or “PSMS,” which involves use of text messaging charged to consumers at a higher rate than standard text messaging. These types of charges had been the focus of mounting reports of abuses. Products charged to consumers through the PSMS system generally have involved digital goods used on mobile phones, such as ringtones and cellphone wallpaper, or for services such as subscriptions to periodic text message content sent to the subscriber on subjects such as horoscopes or celebrity gossip.

To assess the nature and scale of wireless cramming, the Committee's majority staff reviewed narrative and documentary information provided by the four major wireless carriers, entities known as “billing aggregators” that serve as middlemen between vendors and carriers in the billing process, and other sources.

Unfortunately, the information reviewed by the Committee shows that, just as in the landline context, cramming on wireless phone bills has been widespread and has caused consumers substantial harm. Specifically, this report finds:

- Third-party billing on wireless phone bills has been a billion dollar industry that has yielded tremendous revenues for carriers. AT&T, Sprint, T-Mobile, and Verizon generally retained 30%-40% of each vendor charge placed.
- Despite industry assertions that fraudulent third-party wireless billing was a “de minimis” problem, wireless cramming has been widespread and has likely cost consumers hundreds of millions of dollars.
- The wireless industry was on notice at least as early as 2008 about significant wireless cramming concerns and problems with third-party vendor marketing tactics, yet carriers' anti-cramming policies and sometimes lax oversight left wide gaps in consumer protection:
 - Consumer billing authorization requirements known as the “double opt-in” that were touted as safeguards by industry were porous, and multitudes of scammers appeared to have repeatedly skirted them.
 - Some carrier policies allowed vendors to continue billing consumers even when the vendors had several months of consecutively high consumer refund rates –

and documents obtained by the Committee indicate this practice occurred despite vendor refund rates that at times topped 50% of monthly revenues.

- Carriers placed questionable reliance on billing aggregators in monitoring conduct of vendors that were charging consumers on carriers' billing platforms.

In November 2013, the Attorney General of Texas brought an action alleging that Mobile Messenger, one of the major PSMS billing aggregators, had engaged in a deceptive scheme with vendors to cram consumers' bills. Within weeks – and after years of wireless industry attestations about its effective consumer protection practices – AT&T, Sprint, T-Mobile, and Verizon abruptly announced they would virtually eliminate PSMS billing on their platforms.

Today, while the major carriers have phased out commercial PSMS services, they continue to allow third-party charges on consumers' wireless bills using methods that do not involve PSMS. These include methods sometimes labeled “direct carrier billing” (DCB) through which vendors using websites and apps connect to carrier billing platforms. To date, products and services charged through these non-PSMS billing methods have primarily involved digital content, such as music and apps including games with in-app purchasing capabilities.

Direct carrier billing methods are relatively nascent, and it is not possible at this stage to predict the extent to which scammers will find ways to cram charges on wireless bills under these non-PSMS systems. As new third-party wireless billing methods continue to evolve, it is important that industry and policymakers evaluate the consumer protection gaps that have enabled widespread deceptive and fraudulent charges to be placed on consumers' landline and wireless bills, and to ensure that the unfortunate history of cramming on consumer phone bills does not repeat yet again.

I. BACKGROUND

A. Initiation of Third-Party Billing on Telephone Bills

Third-party billing on consumer phone bills grew out of two regulatory steps that occurred in the 1980s: the divestiture of AT&T in 1984 and de-tariffing of telephone billing and collection in 1986. Prior to those steps, AT&T had its own billing and collection system that encompassed both local and long-distance charges. Following the break-up of AT&T, regional bell operating companies, also known as local exchange carriers, were not allowed to offer their own long-distance services, and began providing billing collection services to AT&T and other companies that offered long-distance services.¹

Over time, telephone companies opened these billing platforms to an array of other third-party vendors that offered products and services beyond those directly related to phone service – from webhosting, to online gaming, online photo storage, and roadside assistance.² Telephone numbers thus became a payment method similar to credit card numbers. However, third-party charges levied on the phone bill platform did not receive the same protections as credit card payments. For example, with credit card payments, consumers’ liability for unauthorized charges is limited to \$50, consumers have the right to dispute unauthorized charges, and consumers have the right to seek to reverse a charge.³ Further, unlike credit card numbers, telephone numbers for landline phones are widely accessible to anyone with a telephone directory.⁴

B. Third-Party Charges on Landline Phone Bills

From early on, industry representatives pledged that voluntary industry practices would protect consumers from billing scams relating to third-party charges on the carrier billing platforms, and carriers agreed upon a set of nonbinding guidelines.⁵ At a Senate hearing in July 1998, the President of the United States Telephone Association asserted, “I have a high degree of confidence that these voluntary guidelines will produce an effective means to curb this abuse,” that the industry has “a powerful self-interest to correct this problem,” and, that the industry was “working overtime” to eliminate “this scourge.”⁶

However, over the decade that followed, consumers increasingly began to complain that the third-party charges appearing on their wireline – also known as “landline” – telephone bills were unauthorized. This came to be known as “cramming.” State and federal law enforcement

¹ Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-*

² See Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-Party Charges on Telephone Bills*, at 22 (July 12, 2011).

³ See Fair Credit Billing Act, 15 U.S.C. §§ 1666-1666j; Consumer Credit Protection Act 15 U.S.C. § 1643; Regulation Z, 12 C.F.R. § 1026.13.

⁴ See Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-Party Charges on Telephone Bills*, at 2 (July 12, 2011).

⁵ See Federal Communications Commission, *Anti-Cramming Best Practices Guidelines* (available at www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html) (accessed July 7, 2011).

⁶ Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, *Hearing on “Cramming”: An Emerging Telephone Billing Fraud*, 105th Cong. (July 23, 1998) (S. Hrg. 105-646).

agencies brought dozens of enforcement actions against third-party crammers that highlighted problems consumers were encountering. For example:

- In 2006, the Attorney General of Florida filed a lawsuit against Email Discount Network for charging 20,000 Florida consumers' telephone bills for e-mail accounts and coupons they did not request or use;⁷
- In 2009, the Attorney General of Illinois filed a lawsuit against US Credit Find for placing "unauthorized charges on more than 9,000 Illinois consumers' phone bills" for a purported online tutorial that would "help consumers fix their credit;"⁸ and
- In 2010, a federal district court awarded the FTC a \$37.9 million judgment against Inc21.com Corporation and related third-party vendors after learning that as few as 3% of the defendants' customer base expressly authorized the defendants' charges on their telephone bills.⁹

In 2010, Chairman Rockefeller opened an investigation to examine the extent of third-party billing on landline telephone bills. This investigation resulted in a majority staff report issued in July 2011 that found:

- (1) third-party billing on wireline telephone bills was a billion-dollar industry, with over \$10 billion dollars in charges placed on consumer bills over a five year period;
- (2) a substantial percentage of the charges placed on consumers' telephone bills were likely unauthorized;
- (3) telephone companies profited from cramming, generating over \$1 billion dollars in revenue from placing third-party charges on customer bills over preceding years;
- (4) cramming affected every segment of the landline telephone customer base, from individuals to small businesses, non-profits, corporations, government agencies, and educational institutions;
- (5) many third-party vendors were illegitimate and created solely to exploit third-party billing;
- (6) many telephone customers who were crammed did not receive help from their telephone companies; and
- (7) telephone companies were aware that cramming was a major problem on their third-party billing systems.¹⁰

Following release of the investigation's findings at a Committee hearing and through a majority staff report, in early 2012 the three major telephone companies – Verizon, AT&T, and

⁷ See Settlement Agreement, *Florida, Office of the Attorney General v. Email Discount Network*, Fla. 2d Cir. Ct. (No. 2006 CA 2475) (Feb. 15, 2007).

⁸ See Press Release, *Madigan Reaches Agreement with US Credit Find to Prevent Phone Cramming*, The Office of the Illinois Attorney General (June 18, 2009).

⁹ See *Federal Trade Commission v. Inc21.com Corp.*, 745 F.Supp.2d 975, 982-983 (N.D. Cal. 2010).

¹⁰ Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-Party Charges on Telephone Bills*, at ii-iv (July 12, 2011).

CenturyLink – agreed to stop placing third-party charges for enhanced services on their customers’ wireline telephone bills.¹¹ These and other carriers continued, however, to allow third parties to place charges on consumers’ wireless telephone bills.

C. The Emergence of Cramming on Wireless Phone Bills

Over the past two decades, consumers have migrated from using landline phones to relying on mobile phones,¹² including Internet-enabled smartphones that today represents over half of the mobile phone market.¹³ As use of wireless phones began to increase, reports began to mount that consumers were being “crammed,” or charged for text message services for which they had not enrolled, on their wireless phone bills. Many of the products that were the subject of consumer complaints were charges for subscription services such as celebrity gossip, horoscopes, sports scores, love tips, and diet tips, which were similar to many of the services found to be fraudulent in the Committee’s 2011 wireline cramming investigation.¹⁴

In recent years, private parties, state Attorneys General, the Federal Trade Commission (FTC), and the Federal Communications Commission (FCC) have brought a number of actions highlighting consumer protection vulnerabilities in the wireless billing system, particularly with respect to charges placed through a system known as premium short message service (PSMS).

For example, between 2008 and 2010, the Attorney General of Florida reached settlements with AT&T Mobility, Verizon, T-Mobile, and Sprint, wherein the companies agreed to issue refunds to customers billed for ringtones, wallpapers, and other mobile content that had been advertised on the internet as free, but resulted in consumers being signed up for monthly text message subscriptions.¹⁵ A plethora of other actions followed.¹⁶

¹¹ See Senate Committee on Commerce, Science, and Transportation, *Rockefeller Hails Verizon Decision to Shut Down Unwanted 3rd-Party Charges on Telephone Bills* (Mar. 21, 2012); Senate Committee on Commerce, Science, and Transportation, *Another Major Phone Company Agrees to End Third-Party Billing on Consumer Phone Bills* (Mar. 28, 2012); *Chairman Rockefeller Introduces Telephone Bill Anti-Cramming Legislation*, U.S. Federal News (June 14, 2012).

¹² A recently released report by the National Center for Health Statistics showed that two out of five U.S. households, or 41%, had only wireless phones in the second half of 2013 (July-December 2013). Pew Research Center, *CDC: Two of Every Five U.S. Households Have Only Wireless Phones* (July 8, 2014) (online at <http://www.pewresearch.org/fact-tank/2014/07/08/two-of-every-five-u-s-households-have-only-wireless-phones/>).

¹³ As of January 2014, 90% of American adults had a cell phone and 58% had a smartphone. Pew Research Center, *Cell Phone and Smartphone Ownership Demographics* (online at <http://www.pewinternet.org/data-trend/mobile/cell-phone-and-smartphone-ownership-demographics/>).

¹⁴ See *What’s Your Sign? It Could Be a Cram*, New York Times (Mar. 24, 2012) (reporting on a consumer who complained of being billed for horoscope text services not authorized). In the wireline cramming investigation, the Committee found that companies that were charging consumers each month for e-mail accounts that included weekly e-mail messages with “celebrity gossip” and “fashion tips.” See Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-Party Charges on Telephone Bills*, at ii-iii (July 12, 2011); See also footnote 16 *infra*, detailing legal actions concerning various subscription services.

¹⁵ See *FL AG McCollum in Settlement With Sprint Over ‘Free’ Ringtones*, Bloomberg (Oct. 8, 2010) (online at <http://www.bloomberg.com/apps/news?pid=21070001&sid=aXwc4FpkupsU>); *T-Mobile \$600k Settlement with Florida AG Affects All Mobile Content Marketing*, Mobile Marketer (July 22, 2010)

Most recently, the FTC filed its first wireless cramming complaint against a major carrier, alleging that T-Mobile placed unauthorized third-party charges on its customers' wireless bills, including in some cases, for services that had refund rates of up to 40% in a month. The complaint alleged that T-Mobile knew or should have known that these charges were not authorized and that T-Mobile's billing practices – allegedly burying charges deep into phone bills and without clear descriptions – made it difficult for consumers to find these unauthorized charges on their bills. According to the complaint, when consumers found these charges on their bills, T-Mobile failed to provide full refunds, and directed consumers to the third-party content providers for redress.¹⁷ The FCC announced that it is also investigating complaints against T-Mobile regarding these same practices.¹⁸

(online at <http://www.mobilemarketer.com/cms/news/legal-privacy/6873.html>). See Part I.D below for discussion of additional state and federal actions.

¹⁶ See *Texas v. Eye Level Holdings, LLC, et al.*, Tex. D. Ct., Travis County (No. 1:11-cv-00178) (Mar. 11, 2011) (where the Texas Attorney General accused the defendants of engaging in deceptive trade practices by running a text messaging scheme that cost consumers in Texas millions in unauthorized wireless charges; and defendants agreed to pay nearly \$2 million to settle the charges); *Federal Trade Commission v. Wise Media, LLC, et al.*, N.D. Ga. (No. 1:13cv1234) (Apr. 16, 2013) (where the third-party content provider was charged for placing over \$10 million on consumers' wireless bills for unauthorized charges for PSMS messages containing horoscopes, love and flirting tips, and other information); *Federal Trade Commission v. Jesta Digital, LLC, also d/b/a JAMSTER*, D.D.C. (No. 1:13-CV-01272) (Aug. 20, 2013) (where the third-party content providers were charged with cramming unwanted charges on consumers' cell phone bills for ringtones and other mobile content); *Texas v. Mobile Messenger U.S. Inc., et al.*, Tex. D. Ct., Travis County (Nov. 6, 2013) (alleging that defendants, who were a billing aggregator, four content providers, and an online advertising placement business, conspired to enroll consumers in PSMS programs for ringtones, horoscopes, celebrity gossip news, and other coupons without consumer consent); and *Federal Trade Commission v. Tatto, et al.*, C.D. Cal (No. 2:13-cv13-8912-DSF-FFM) (Dec. 5, 2013) (in which FTC alleged that defendants placed millions of dollars on consumers' wireless phone bills for text messages that consumers did not authorize; and defendants ultimately agreed to surrender over \$10 million in assets to settle these charges). Private parties also have brought legal actions involving third-party cramming charges. See *Tracie McFerren v. AT&T Mobility LLC*, Sup. Ct. of Ga. (No. 08-cv-151322) (May 30, 2008) (a class action suit alleging that AT&T failed to set up controls to stop unauthorized third-party charges on consumers' wireless bills); *Gray v. Mobile Messenger Americas, Inc.*, S.D. Fl. (No. 0:08-cv-61089-CMA) (July 11, 2008) (a class action suit charging Mobile Messenger, a billing aggregator, with placing unauthorized third-party charges on consumers' wireless bills); *Armer v. OpenMarket, Inc.*, W.D. of Wash. (No. 08-CV-01731-CMP) (Dec. 1, 2008) (a lawsuit against OpenMarket, a billing aggregator, and Sprint concerning alleged unauthorized charges for PSMS messages containing content such as ringtones, sports score reports, weather alerts, and horoscopes); and *Cellco Partnership d/b/a Verizon Wireless v. Jason Hope, Eye Level Holdings, LLC, et al.*, D. Ariz. (No. 2:11-cv-00432-DGC) (Mar. 7, 2011) (in which Verizon charged that the third-party content provider collected unauthorized or deceptive charges on consumers' wireless bills through PSMS messages).

¹⁷ See *Federal Trade Commission v. T-Mobile USA, Inc.*, W.D. Wash. (No. 2:14-cv-00967) (July 1, 2014) (online at ftc.gov/enforcement/cases-proceedings/132-3231/t-mobile-usa-inc).

¹⁸ FCC, *FCC Investigates Cramming Complaints Against T-Mobile* (July 1, 2014) (online at <http://www.fcc.gov/document/fcc-investigates-cramming-complaints-against-t-mobile>).

D. State and Federal Enforcement and Regulatory Authority

Agencies at the state and federal level have enforcement and regulatory authority to protect consumers from cramming. Many states have enacted legislation and regulations prohibiting cramming on landline service.¹⁹ Further, California has adopted regulatory provisions specifically addressing wireless cramming.²⁰ In addition, state Attorneys General have been active in pursuing cases against carriers, billing aggregators, and third-party content providers alleged to have crammed consumers on their wireless bills under their state laws prohibiting unfair and deceptive trade practices.²¹

At the federal level, both the FTC and the FCC have jurisdiction over cramming. The FTC enforces Section 5(a) of the FTC Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce.”²² The FTC has pursued enforcement actions against third-party content providers, billing aggregators, and carriers based on this authority, finding that cramming charges onto phone bills is both an unfair and deceptive practice.²³

In addition to these enforcement actions, the FTC has held a workshop regarding wireless cramming and explored the possibility of federal regulations.²⁴

The FCC has pursued cramming cases under Section 201(b) of the Communications Act of 1934, which states in pertinent part: “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall

¹⁹ See, e.g., Mich. Comp. Laws § 484.2502; Cal. Pub. Util. Code § 2890; 52 Pa. Code § 64.23; Tex. Util. Code § 17.151; Va. Code § 56-479.3. In 2011, Vermont became the first state to enact legislation prohibiting third-party billing on landline telephone bills, with three limited exceptions: “(1) billing for goods or services marketed or sold by entities subject to the jurisdiction of the Vermont Public Service Board; (2) billing for direct-dial or dial-around services initiated from the consumer’s telephone; and (3) operator-assisted telephone calls, collect calls, or telephone services provided to facilitate communication to or from correctional center inmates.” 9 Vt. Stat. § 2466. Illinois enacted similar legislation in 2012. See 815 ILCS 505/2HHH.

²⁰ The California Public Utilities Commission adopted rules that (1) established that wireless carriers must obtain explicit authorization from consumers before they can be billed for third-party charges; (2) establish that the carriers must refund consumers for unauthorized charges and investigate any complaints of unauthorized charges; and (3) requires wireless carriers to report quarterly the total amount of refunds given to California consumers for unauthorized charges and third party vendors that have been suspended or terminated. See Press Release, *CPUC Strengthens Consumer Protections Against Cramming and Fraud on Telephone Bills*, California Public Utilities Commission (Oct. 28, 2010).

²¹ See, e.g. cases cited at footnote 16, *supra*.

²² 15 U.S.C. § 45(a). Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices, and acts or practices are unfair if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. *Id.*

²³ See, e.g., cases cited at footnote 16, *supra*.

²⁴ See Federal Trade Commission Roundtable, *Mobile Cramming, An FTC Roundtable* (May 8, 2013) (online at <http://www.ftc.gov/news-events/events-calendar/2013/05/mobile-cramming-ftc-roundtable>). The FCC also held a workshop on wireless cramming. See Federal Communications Commission Workshop, *Bill Shock and Cramming* (Apr. 17, 2013) (online at <http://www.fcc.gov/events/workshop-bill-shock-and-cramming>).

be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful”²⁵ The FCC has found “cramming” to be an “unjust and unreasonable” practice.²⁶

Current FCC regulations also contain “truth-in-billing” rules regarding both wireline and wireless phone bills.²⁷ Further, on April 27, 2012, the FCC issued a Further Notice of Proposed Rulemaking (FNPRM) seeking comments on additional measures to prevent wireline cramming and on possible regulatory and non-regulatory measures to address wireless cramming.²⁸ The comment period closed in July 2012.²⁹

In joint comments made to the FCC in 2012, consumer advocates including the Consumers’ Union, Consumer Federation of America, and National Consumer League,³⁰ pressed the agency to adopt rules that would, among other things: (1) prohibit third party charges on wireless accounts except for charitable or political giving;³¹ (2) for recurring charges (such as subscriptions), require authorization every time a charge is placed on the consumer’s account;³² (3) require carriers to report wireless cramming complaints on a regular basis;³³ and establish a clear dispute resolution process when consumers complain of unauthorized charges on their wireless bills that includes consumer protections such as the right to withhold payment for the charge while the dispute resolution process takes place.³⁴ Industry representatives, on the other hand, submitted comments arguing that, at the time, wireless cramming was not “a prevalent consumer issue,” that voluntary industry measures would ensure that it did not become a significant consumer issue, and that the FCC lacked authority to issue wireless cramming rules.³⁵

²⁵ 47 U.S.C. § 201(b).

²⁶ See Order, *FCC v. Assist 123, LLC*, at 3 (EB-TCD-12-00005541) (July 16, 2014) (online at <http://www.fcc.gov/document/assist-123-pay-13m-resolve-wireless-cramming-investigation>).

²⁷ 47 C.F.R. §§ 64.4200-64.2401.

²⁸ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, 27 FCC Rcd 4436 (Apr. 27, 2012). The additional safeguards proposed regarding wireline cramming “require wireline carriers that currently offer blocking of third-party charges to clearly and conspicuously notify consumers of this option on their bills and websites, and at the point of sale; to place non-carrier third-party charges in a distinct bill section separate from all carrier charges; to provide subtotals in each section of the bill; and to display separate subtotals for carrier and non-carrier charges on the payment page of the bill.” *Id.*

²⁹ *Consumer and Governmental Affairs Bureau Announces Comment Deadline for “Cramming” Further Notice of Proposed Rulemaking*, Public Notice, DA 12-833 (May 25, 2012).

³⁰ The comments were also joined by the National Consumer Law Center, Consumer Action, and the Center for Media Justice. *Comments of Center for Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center – On Behalf of its Low-Income Clients, and National Consumer League*, Federal Communications Commission, CG Docket No. 11-116, CG Docket No. 09-158, & CG Docket No. 98-170 (June 25, 2012).

³¹ *Id.* at 18.

³² *Id.* at 20.

³³ *Id.* at 20-21.

³⁴ *Id.* at 21-22.

³⁵ *Comments of CTIA-The Wireless Association*, Federal Communications Commission, CG Docket No. 11-116, CG Docket No. 09-158, & CG Docket No. 98-170 (June 25, 2012).

On August 27, 2013, the FCC released a Public Notice seeking to refresh the record on cramming “in light of developments and additional evidence”³⁶ related to both wireline and wireless cramming. The FCC rulemaking remains pending.

II. COMMITTEE INVESTIGATION

In June 2012, Chairman Rockefeller followed up on his wireline cramming investigation to open an inquiry into the scope of unauthorized third-party charges in the wireless context and what steps carriers had undertaken to protect consumers from cramming. He launched this investigation with letters to the four major U.S. wireless phone companies – Sprint, T-Mobile, Verizon Wireless, and AT&T³⁷ – requesting information regarding the companies’ relationships with third-party vendors and billing aggregators and their practices to prevent cramming on consumer wireless bills.

As evidence of wireless cramming continued to mount, Chairman Rockefeller followed up with additional letters to the same four carriers in March 2013 requesting billing data the companies had provided to the California Public Utilities Commission (CPUC) under California’s law requiring disclosures relating to wireless billing.³⁸ Also in March 2013, the Chairman requested information from five major billing aggregators – Ericsson, mBlox, Mobile Messenger, Motricity, and OpenMarket – relating to their practices in facilitating third-party wireless billing and steps they were taking to prevent abuses.³⁹

In June 2013, Chairman Rockefeller wrote the four major carriers to request additional information on questions that had emerged regarding how carriers were monitoring consumer authorizations of third-party billing and following up on consumer concerns.⁴⁰

In November 2013, the Attorney General of Texas filed a complaint against Mobile Messenger, one of the major wireless billing aggregators, alleging that the company had engaged in a deceptive scheme with third-party vendors to cram consumers.⁴¹ These allegations raised

³⁶ *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record Regarding “Cramming,”* CG Docket No. 11-116, CG Docket No 09-158, & CC Docket No. 98-170, Public Notice, DA 13-1807 (rel. Aug. 27, 2013). Issues on which FCC sought comment included the extent of cramming for consumers of wireline and wireless services, the need for an opt-in requirement and the mechanics of an opt-in process for wireline and wireless services, the details and efficacy of any other industry efforts to combat wireline and wireless cramming, whether different measures to combat cramming are appropriate for small and rural wireless carriers and other wireless carriers, and whether additional measures to combat wireline and wireless cramming are appropriate. *Id.* at 2-3.

³⁷ Senate Committee on Commerce, Science, and Transportation, *Rockefeller Asks Wireless Carriers for Information on Third-Party Charges* (June 12, 2012).

³⁸ Senate Committee on Commerce, Science, and Transportation, *Rockefeller Vows to Avert Wireless Cramming Scams on Consumers* (Mar. 1, 2013).

³⁹ Senate Committee on Commerce, Science, and Transportation, *Rockefeller Questions Billing Aggregators on Wireless Cramming* (Mar. 22, 2013).

⁴⁰ Senate Committee on Commerce, Science, and Transportation, *Senators Introduce Legislation to Stop Cramming on Telephone Bills* (June 12, 2013).

⁴¹ Plaintiff’s Original Petition, *Texas v. Mobile Messenger U.S. Inc., et al*, Tex. D. Ct., Travis County (Nov. 6, 2013).

questions regarding representations Mobile Messenger had made to the Committee about the company's commitment to consumer protection and the assurances major carriers had given the Committee that aggregators worked with carriers to promote consumer protections in the third-party wireless billing process. In late November, Chairman Rockefeller wrote to Mobile Messenger seeking additional information concerning a subset of vendors whose conduct had raised concerns and pressing for production of previously requested information.⁴²

When Mobile Messenger refused to provide key information requested in the Chairman's March 2013 and November 2013 letters, the Committee on March 14, 2014, issued a subpoena to the company, and Mobile Messenger was responsive to the subpoena.

Over the course of the Committee's investigation, Committee majority staff reviewed thousands of pages of narrative and documentary materials produced by wireless carriers and billing aggregators, and conducted interviews of carrier and aggregator representatives as well as other experts. An association for the wireless industry, CTIA-The Wireless Association (CTIA), also provided the Committee documentary and narrative information about the third-party wireless billing system.

III. OVERVIEW OF PREMIUM SHORT MESSAGE SERVICE (PSMS) WIRELESS BILLING

From the early days of third-party wireless billing, major carriers allowed third-party vendors to charge for their goods and services on customers' wireless accounts. One system that became prevalent is known as the premium short message service (PSMS) whereby consumers would be charged at a higher rate for one-time content or subscriptions received via text message as compared to the standard messaging rate.⁴³ PSMS charges, along with other third-party charges, are billed to the consumers' wireless account and appear on their billing statement. Over the past few years, use of PSMS has been waning and major carriers ultimately stopped most commercial PSMS billing early in 2014.⁴⁴ At the same time, use of other methods that do not involve PSMS for placing third-party charges on consumers' wireless bills has been increasing.

This section of the report provides an overview of the billing process associated with PSMS and the self-regulation regime that the wireless industry developed to oversee marketing

⁴² Letter from Chairman Rockefeller to Michael L. Iaccarino, Chief Executive Officer, Mobile Messenger (Nov. 26, 2013).

⁴³ Verizon Wireless, *Premium Messaging FAQs* (accessed July 27, 2014) (available at http://www.verizonwireless.com/support/faqs/Premium_TXT_and_MMS/faq_premium_txt_and_mms.html).

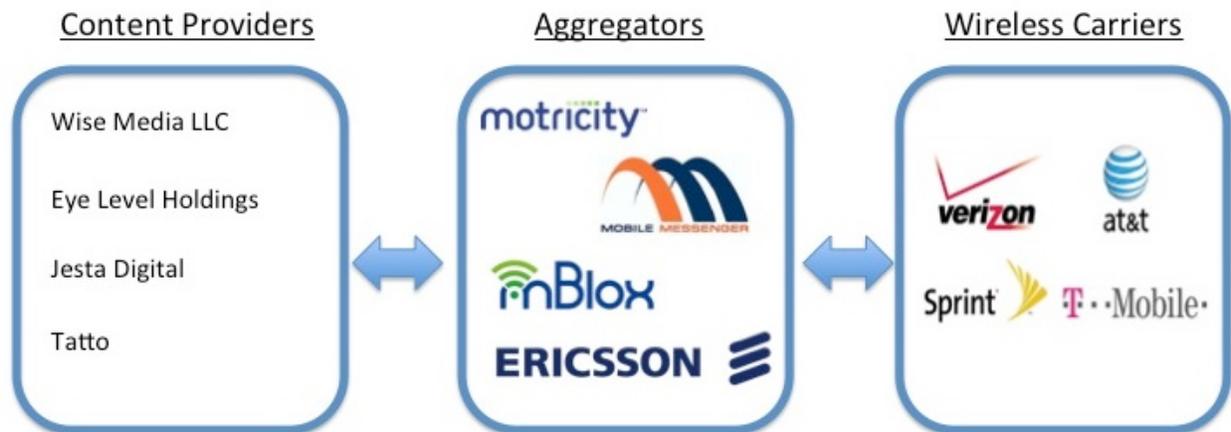
⁴⁴ See, e.g., Letter from Chief Executive Officer, mBlox, to Senator John D. Rockefeller IV (Apr. 23, 2013); *VT. AG: 3 Firms End Extra Cellphone Bill Charges*, Associated Press (Nov. 21, 2013). See also *AT&T Mobility, Sprint and T-Mobile Will No Longer. . . .*, Communications Daily (Nov. 25, 2013) (quoting Verizon General Counsel as saying that Verizon had "previously decided to exit the premium messaging business"). PSMS use continues for charitable giving and political contributions. Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014); Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014).

and billing under the PSMS system. Section V of the report addresses alternative third-party billing methods that have been emerging amid the recent decrease in PSMS billing.

A. The PSMS Third-Party Wireless Billing Process

Third-party PSMS billing generally has involved three types of companies: vendors (often known as content providers), wireless carriers, and middlemen known as “billing aggregators” who have provided technology to link content providers and wireless carriers. Under this system, vendors contract with billing aggregators to facilitate placement of charges for goods and services – often referred to as “programs” – on consumers’ wireless accounts. Billing aggregators in turn contract directly with the wireless carriers, which control access to the consumers’ wireless bills. Each party in this process has retained a portion of the charges paid by consumers.⁴⁵

FIGURE I: PARTIES IN THE PSMS BILLING PROCESS



In order for a content provider to send commercial premium text messages, the provider first has to obtain authorization to use a five or six-digit code known as a “common shortcode” (CSC).⁴⁶ CTIA-The Wireless Association has managed and controlled issuance of CSCs.⁴⁷ Once a content provider has been granted a shortcode, they also must apply to individual wireless carriers to obtain access to the carrier’s billing platform to charge consumers for specific content – or “campaigns” – associated with the shortcode.⁴⁸

⁴⁵ See, e.g., Master Services Agreement provided by Mobile Messenger to Senate Commerce Committee (AG-MM-COMM-001908-001911).

⁴⁶ Common shortcodes can also be used to allow consumers to make charitable donations and political contributions via text messaging. The Committee’s inquiry focused on commercial shortcode charges.

⁴⁷ See Common Short Code Administration, *About Short Codes Frequently Asked Questions – CTIA Vetting* (online at <http://www.usshortcodes.com/about-sms-short-codes/sms-marketing-faqs.php#.U810L6ggZss>).

⁴⁸ See, e.g., Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 5 (July 11, 2012); Letter from General Counsel, Verizon Wireless, to Chairman John

From a consumer's perspective, the PSMS purchase process as prescribed by industry guidelines has worked as follows. Using an authorization process known as the "double opt-in," consumers must take two affirmative acts when purchasing goods or services with their mobile phone: one to initiate the purchase and one to confirm the purchase.⁴⁹ At least one of these actions must be performed using the mobile device associated with the wireless account to be charged.

Industry guidelines also have required content providers to provide information and disclosures to consumers before completing the PSMS charge including the identity of the content provider, contact details for the content provider, a short description of the program, pricing, and terms under which consumers could opt out of the subscription, among other requirements.⁵⁰

In addition, content providers must provide a confirmation message after affirmative consumer acceptance, including disclosures about the premium charge billed or deducted from the user's account.⁵¹

Following is an example of what the prescribed authorization process looks like from a consumer's perspective: a consumer would see an advertisement online, on television, or in-store, for downloading a song. The advertisement denotes the advertisement's sponsor, a description of the service or good being offered, its cost, the frequency of the service – which in this case was one song – information regarding customer support, opt-out information, and information regarding any additional carrier costs.

D. Rockefeller IV, at 5 (July 11, 2012); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 1 (July 11, 2012).

⁴⁹ Mobile Marketing Association, *Global Code of Conduct*; Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging, Version 7.0* (Oct. 16, 2012) (online at: <http://www.mmaglobal.com/files/bestpractices.pdf>).

⁵⁰ *Id.*

⁵¹ *Id.*

FIGURE II: STEPS IN PRESCRIBED PSMS BILLING PROCESS⁵²



The advertisement would tell the consumer to send a text to the shortcode “12345” with the message “music” to buy the song list in the ad. The consumer would take this step, then receive a message confirming the content ordered, which would reiterate much of the information provided in the original advertisement, including program sponsor, price, frequency of product, how to ask for help with the product purchase, and any additional carrier costs. After confirming this content was accurate, the consumer was to authorize the purchase by sending an affirmative message, in this case “Yes,” to the “12345” shortcode. The consumer would then receive a link to the product purchased.

B. Voluntary Industry Oversight Over Third-Party Wireless Billing Practices

With respect to third-party billing via PSMS, the U.S. wireless industry developed industry-wide consumer protection standards. Industry-based member organizations created guidelines and recommendations for mobile marketers including parties involved in the marketing and sale of products consumers charge to the wireless phone bills through the PSMS system. Further, carriers developed their own individual policies for oversight of these charges. The following is a description of industry policies concerning the placement of third-party charges on consumer wireless bills.

1. Industry-Wide Oversight

The Mobile Marketing Association (MMA) and CTIA – The Wireless Association (CTIA) spearheaded a number of industry initiatives that were widely adopted throughout the

⁵² Graphic was provided to the Committee by the company Boku.

industry for PSMS billing.⁵³ MMA drafted the Global Code of Conduct and the U.S. Consumer Best Practices for Messaging to provide advertisers, aggregators, application providers, carriers, content providers, and publishers with guidelines for implementing shortcode programs.⁵⁴ The guidelines provide detailed requirements for advertising and notice to consumers, along with the appropriate methods for authenticating consumer PSMS purchases.

CTIA – in its Mobile Commerce Compliance Handbook – provides “a unified standard of compliance for mobile carrier billing.” The guidelines set forth principles for acceptable program content, opt-in procedures, and cancellation. Many of these are highlighted in the “Consumer Bill of Rights,” which provide:

- Programs must use a two-factor authentication for all opt-ins.
- After opt-in, users should receive purchase confirmation of their purchase, either on an additional screen or via a text message.
- All offers must display clear, legible pricing information adjacent to the call-to-action. Pricing information must appear on all screens in the purchase flow.
- Billing frequency information should appear with pricing information, and subscriptions should be labeled clearly as such.
- Clear opt-out instructions must be provided before the purchase is completed and before renewal billing each month.
- All offers must include customer care contact information in the form of a toll-free phone number or an email address. Contact information should function and result in actual user help.
- All offers must supply privacy policy access.
- Purchase flows should include clear descriptions of products offered, and products marketed must match products delivered.
- Product descriptions on customers’ wireless bills must reflect accurately the product purchased. Descriptions should include the billing shortcode and the program name.⁵⁵

CTIA in conjunction with an outside auditor would vet content providers that were seeking to lease shortcodes to market and charge products to consumers.⁵⁶ Content providers

⁵³ Mobile Marketing Association, *Global Code of Conduct* (July 15, 2008); Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging, Version 7.0* (Oct. 16, 2012); and CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.0* (June 4, 2012).

⁵⁴ Mobile Marketing Association, *Global Code of Conduct* at 1 (July 15, 2008); Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging, Version 7.0* (Oct. 16, 2012). MMA defines “application provider” as an organization that offers network based software solutions. Mobile Marketing Association, *MMA Glossary – Application Provider* (2014) (online at <http://mmaglobal.com/wiki/application-provider>). “Publisher” is defined as a company that provides WAP sites [a website that is specifically designed and formatted for display on a mobile device] and/or facilitates the delivery of advertising via one or more WAP sites; also, as a publisher of mobile content, such as games and personalization products. Mobile Marketing Association, *MMA Glossary – Publisher* (2014) (online at <http://mmaglobal.com/wiki/publisher>).

⁵⁵ CTIA – The Wireless Association, *Consumer Bill of Rights* (July 1, 2013).

that passed CTIA screening through the Common Short Code Administration could lease a shortcode from CTIA consistent with terms of a user agreement requiring compliance with industry best practices and standards, such as whether the vendor makes clear disclosures to the consumer about how to authorize purchases, or whether the consumer is signing up for a one-shot versus a recurring charge.⁵⁷

Content providers that are permitted to charge consumers via the PSMS system have been subject to ongoing CTIA monitoring for compliance with industry standards surrounding program content, as well as opt-in and cancellation procedures.⁵⁸ In 2010, CTIA began providing carriers and billing aggregators access to an online portal that provided the results of these reviews – or audits – in reports that detailed why and how guidelines were violated and that assigned a severity level to each failure. Under this system, each carrier has been responsible for determining what follow up they would conduct with the violating vendor.⁵⁹ In addition, carriers receive email notification of new audit findings⁶⁰ and weekly reports aggregating the audit failures across the mobile content market.⁶¹ These weekly reports have been compiled into monthly reports to the carriers, which also identify the PSMS billing aggregators that hosted content with the most failures.⁶²

⁵⁶ CTIA has been screening all applicants for shortcodes by requiring basic identity and program information, such as the company name, corporate registration, and legal history. See Common Short Code Administration, *About Short Codes Frequently Asked Questions – CTIA Vetting* (online at <http://www.usshortcodes.com/about-sms-short-codes/sms-marketing-faqs.php#.U810L6ggZss>). CTIA has worked with Aegis Mobile and WMC Global to conduct the vetting process. See *id.*; Aegis Mobile, *CTIA Vetting FAQ* (online at <http://www.aegismobile.com/resources/industry-documents/ctia-vetting-faq/>).

⁵⁷ Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014); Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging, Version 7.0* at 23-24 (Oct. 16, 2012); CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.0* at 3-4 (June 4, 2012). CTIA also included the same provisions in its updated Handbook. See CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.2* at 5, 7 (Aug. 1, 2013).

⁵⁸ See CTIA – The Wireless Association *Launches Common Short Codes Media Monitoring Process*, Business Wire (June 15, 2009) (online at <http://www.businesswire.com/news/home/20090615005802/en/CTIA%E2%80%93The-Wireless-Association-Launches-Common-Short-Codes#.U8VyB6ggZss>); WMC Global, *Frequently Asked Questions* (online at <http://www.wmcglobal.com/faq.html>); CTIA, *CTIA In-Market Monitoring Portal User Guide* (online at http://www.wmcglobal.com/assets/ctia_imm_portal_user_guide.pdf); Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014).

⁵⁹ Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014); CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.0*, at 6-7 (June 4, 2012).

⁶⁰ *Id.*

⁶¹ Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014).

⁶² See, e.g., WMC Global for CTIA – The Wireless Association, *In-Market Monitoring Update January 2011*, at 6 (Jan. 2011).

2. Individual Carrier Policies

In responses to Committee inquiries, the four major carriers all reported that they comply with CTIA and MMA guidelines for third-party wireless billing,⁶³ and contractually require the same from their billing aggregators and vendors.⁶⁴ All carriers also highlighted several key components of their oversight policies:

- Vetting of third-party vendors and their services beyond the CTIA vetting process;⁶⁵
- The two-step authentication process known as the “double-opt-in” required for consumer approval of third-party services charged on wireless bills⁶⁶ (see discussion above in part III.A);
- Monitoring of third-party vendor opt-in and opt-out functionality as well as how they market to consumers;⁶⁷
- Monitoring of third-party vendors through consumer complaint and refund thresholds;⁶⁸ and
- Offering consumers the option to block third-party purchases that, when implemented, restrict the purchase of any third-party content billed to a customers’ mobile device.⁶⁹

⁶³ Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 4 (July 11, 2012); Letter from General Counsel, Verizon Wireless, to Chairman John D. Rockefeller IV, at 6 (July 11, 2012); Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 2 (July 11, 2012); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 6 (July 11, 2012).

⁶⁴ See, e.g., Sample Advanced Messaging Agreement for Marketing Messaging Hubs provided by mBlox to the Senate Commerce Committee (stating “At a minimum, programs shall be run in a manner that is congruous with the letter and spirit of the MMA Code of Conduct for Mobile Marketing”) (000360).

⁶⁵ Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 1-5 (July 12, 2013); Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 3 (Mar. 22, 2013); Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 4-5 (July 11, 2012); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 3 (July 11, 2012).

⁶⁶ Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 5 (July 11, 2012); Letter from General Counsel, Verizon Wireless, to Chairman John D. Rockefeller IV, Attachment A, at 6 (July 11, 2012); Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 7 (July 11, 2012); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 5 (July 11, 2012).

⁶⁷ One carrier stated that such audits are done “randomly” (Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 8 (June 28, 2013)); while another stated they are done on at least a monthly basis (Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 5-6 (July 12, 2013)).

⁶⁸ Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 5-6 (June 28, 2013); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 4-5 (June 28, 2013); Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 4-5 (July 2, 2013); Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 8 (July 12, 2013).

⁶⁹ Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 6 (July 11, 2012); Letter from Vice President – Government Affairs, Sprint Nextel, to

Three of the four carriers said they also have used “first call” resolution of consumer cramming complaints, in which the consumer is generally refunded their money on the first complaint call.⁷⁰

IV. COMMITTEE FINDINGS ON PSMS THIRD-PARTY WIRELESS CRAMMING

Similar to telecom industry assurances about self-regulation of landline billing, from the outset of the Committee’s review of cramming on wireless bills, the four major wireless carriers – AT&T, T-Mobile, Verizon, and Sprint – told the Committee that their procedures and practices effectively insulate consumers from cramming on charges incurred through the PSMS system. In July 2012 letters to the Committee, carriers characterized this voluntary system as a “robust process designed to protect customers from unscrupulous actors,”⁷¹ asserting that it provides consumers “simplicity and security,”⁷² that the outcome has been a “consistent, secure, and reliable experience” for the consumer,⁷³ and that carriers have “every incentive to avoid losing a customer due to unauthorized third-party charges.”⁷⁴ In July 2013 letters to the Chairman, all four carriers asserted that they had only strengthened their anti-cramming practices.⁷⁵

Over this same time period, major industry associations echoed these assurances.⁷⁶ In June 2012 comments to the Federal Communications Commission, CTIA-The Wireless Association said that “the wireless industry is already successfully engaged in voluntary

Chairman John D. Rockefeller IV, at 4 (June 28, 2013); Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 7 (July 2, 2013); Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 1 (July 12, 2013). Consumers are often made aware of these options at the time of purchase of a wireless plan, during customer service calls regarding the appearance of unauthorized charges on a bill, and on the carriers’ websites.

⁷⁰ Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 4 (June 28, 2013); Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 6 (July 12, 2013); Update from AT&T, to Chairman John D. Rockefeller IV, at 2 (Mar. 11, 2013).

⁷¹ Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 3 (July 11, 2012).

⁷² Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 1 (July 11, 2012).

⁷³ Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 2 (July, 11 2012).

⁷⁴ Letter from General Counsel, Verizon Wireless, to Chairman John D. Rockefeller IV, at 1 (July 11, 2012).

⁷⁵ Letter from Assistant General Counsel, Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 10-12 (July 12, 2013); Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 6-8 (June 28, 2013); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 6-7 (June 28, 2013); and Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 7-11 (July 2, 2013).

⁷⁶ See, e.g., *Comments of CTIA – The Wireless Association*, Federal Communications Commission, CC Docket No. 98-170 (June 25, 2012); Commentary of Mike Altschul, General Counsel, CTIA – The Wireless Association, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

initiatives to prevent cramming,” calling unauthorized third-party wireless billing a “de minimis” problem.⁷⁷ Similarly, the Mobile Marketing Association asserted in May 2013 that the CTIA and MMA rules “are very effective.”⁷⁸

However, documents and other information the Committee obtained and reviewed over the course of its inquiry indicate that – just as with landline cramming – industry has gained substantial profits from third-party wireless billing while providing consumers inadequate protections against deceptive and fraudulent charges on their wireless bills. This section details the findings of the Committee majority staff.

A. Carriers Have Profited Tremendously from Third-Party Wireless Billing

It has been estimated that third-party wireless billing activities likely constitute a multi-billion dollar industry.⁷⁹ The evidence reviewed by the Committee staff for a sample time frame between 2011 and 2013 supports that analysis.

For example, one carrier reported that nearly \$250 million worth of PSMS charges were charged to its customers’ accounts in 2011 alone, while another reported over \$375 million in total charges for the same year.⁸⁰ In addition, information provided by billing aggregators to the Committee shows that the combined revenues of content providers that had relationships with four top aggregators over 2011-2013 totaled over \$1.2 billion.⁸¹ This amount – while substantial – does not reflect the entirety of the third-party wireless billing market, as multiple other aggregators were operating in the PSMS market during this time period,⁸² and other non-PSMS third-party billing mechanisms were emerging as well.⁸³

Further, information provided by the California Public Utility Commission (CPUC) shows that in 2012, over \$191 million worth of third-party charges were placed on consumers’

⁷⁷ *Comments of CTIA – The Wireless Association*, Federal Communications Commission, CC Docket No. 98-170, at 1-2 (June 25, 2012).

⁷⁸ Commentary of Cara Frey, General Counsel, Mobile Marketing Association, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

⁷⁹ Commentary of Jim Greenwell, Chief Executive Officer and President, BilltoMobile, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013) (estimating the volume of such billing to be between \$2 to \$3 billion).

⁸⁰ Letters from Carrier Representatives to Chairman John D. Rockefeller IV (July 2012).

⁸¹ Four out of five aggregators provided revenues of content providers to the Committee. Letter from Head of Corporate Affairs and Communications, Ericsson Inc., to Chairman John D. Rockefeller IV (Apr. 19, 2013); Letter from Chief Administrative Officer and General Counsel, Motricity, Inc., to Chairman John D. Rockefeller IV (May 25, 2013); Letter from Attorney, Mobile Messenger, to Chairman John D. Rockefeller IV (Apr. 21, 2014); mBlox Response to Chairman John D. Rockefeller IV (Apr. 21, 2014).

⁸² Response letters from carriers listed many aggregators. Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 3 (July 11, 2012); Letter from General Counsel, Verizon Wireless, to Chairman John D. Rockefeller IV, at Attachment A (July 11, 2012); Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 4 (July 11, 2012); Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 1 (July 11, 2012).

⁸³ *See, e.g.*, Commentaries of Jim Greenwell, Chief Executive Officer and President, BilltoMobile, and Martine Niejadlik, Compliance Officer and Vice President of Customer Support, Boku, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

wireless bills in California alone – and California has been estimated to constitute about 10% of the wireless market in the United States. Extrapolating and applying the California data across all 50 states, over a span of years, it is likely these numbers would climb into the billions.⁸⁴

Information provided to the Committee by individual carriers indicates that major carriers reaped hundreds of millions of dollars annually from their role in placing third-party charges on wireless phone bills. Contracts reviewed by the Committee show that the carriers generally collected 30% to 40% of the total value of the charges placed.⁸⁵ Individual charges are generally small – most often ranging from \$1 to \$20, with frequent reports of a \$9.99 recurring monthly charge. However, the high volume of these charges yields substantial cumulative revenues. For example, one carrier reported processing over 120 million individual third-party transactions on consumer wireless bills in 2011.

In addition to the carriers' revenue shares, contracts reviewed by Committee staff show that certain carriers have collected additional fees that could also add to their profits. For example, one carrier also collected "Excessive Premium Campaign Refund Rate Fees." These additional fees allow the carrier to charge \$10.00 per customer care call once a content provider's refund rate exceeded 15% per month.⁸⁶ Another carrier has imposed fees ranging from \$25,000 to \$100,000 where providers experience billing issues which include high levels of refunds.⁸⁷

B. Wireless Cramming has Likely Cost Consumers Hundreds of Millions of Dollars

The evidence reviewed by Committee staff indicates that wireless cramming has likely cost consumers hundreds of millions dollars over the past several years. This assessment is based on a review of data regarding refund rates, consumer complaint information provided by carriers and billing aggregators regarding unauthorized third-party charges, and a number of studies and law enforcement actions that have quantified the extent of wireless cramming.

1. Refund Rates

Beginning in 2011, the California Public Utilities Commission (CPUC) required wireless carriers to provide data about refunds made directly to consumers. Numbers provided by CPUC show that between 2011 and 2013, carriers returned over \$60 million in refunds to customers out of \$495 million in total third-party wireless charges, just with respect to California wireless consumers.⁸⁸ While industry argues that refund rates are a "flawed metric" because refunds can

⁸⁴ Comments of California Public Utilities Commission, Federal Communications Commission, CC Docket No. 98-170, at 20 (Nov. 18, 2013).

⁸⁵ Committee staff reviewed a number of contracts between billing aggregators and wireless carriers that outlined the payment arrangements.

⁸⁶ Sample aggregator contract provided to the Senate Commerce Committee (000179).

⁸⁷ Sample aggregator contract provided to the Senate Commerce Committee (000066-000067).

⁸⁸ Between 2011 and 2013, carriers reported refunding \$60,037,906 out of \$495,134,687 in total wireless charges, including \$25,095,834 in 2011, \$23,250,885 in 2012, and \$11,691,187 in 2013, with total billed, including \$173,644,442 in 2011, \$191,302,355 in 2012, and \$130,187,888 in 2013. Comments of California Public Utilities Commission, Federal Communications Commission, CC Docket No. 98-170 (Nov. 18, 2013) and e-mail from CPUC Representatives to Senate Commerce Committee Majority Counsel (Apr. 23, 2014).

be made for reasons other than cramming,⁸⁹ CPUC explained its rationale for using this measure as follows:

[W]e use refunds as a proxy for complaints because when we had complaint reporting, we would end up in endless semantic digressions around the meaning of the word complaint. So refund is something a little more tangible and we assume that in most cases refunds are not made out of the blue but in relation to some expression of dissatisfaction by the customer.⁹⁰

CPUC also notes that this approach addresses concerns carriers have expressed that “tallying subscriber complaints of unauthorized charges would be excessively burdensome.”⁹¹

As noted earlier, the CPUC numbers concern activity on wireless accounts solely in California, which reflects approximately 10% of the total U.S. wireless market.⁹² If the rate of refunds and total charges billed reported to the CPUC were applied nationwide, the total refunds would likely have been well over \$200 million out of \$1.9 billion in 2012 alone. Even assuming that a portion of the refunds reported to the CPUC are not related to cramming, these numbers provide substantial evidence that cramming on wireless bills has been a serious problem.

Industry argues that numbers of refunds is not an accurate tool to assess the incidence of cramming due to the carriers very liberal refund policies. However, one carrier was able to provide a rough breakdown of refunds specifically attributable to complaints that charges were unauthorized – a category they titled “Authorization of Charge Disputed” – and the results are still high. This carrier reported that 28.1% of total refunds issued in 2012 constituted the “Authorization of Charge Disputed” category.⁹³ If this percentage were applied to the \$200 million figure estimated above to reflect total nationwide wireless refunds for 2012, refunds attributable to cramming for that year would top \$50 million nationwide in one year alone. Based on this analysis, over time, wireless cramming has likely cost American consumers hundreds of millions of dollars.

⁸⁹ See *Reply Comments of CTIA – The Wireless Association*, Federal Communications Commission, CC Docket No. 98-170, at 5 (Dec. 16, 2013) (arguing that “refund amounts and refund rates are flawed metrics for assessing instances of unauthorized charges on wireless bills. Carriers have consumer-friendly refund policies that cover a variety of situations and transactions – much more than just unauthorized third-party charges.”).

⁹⁰ Commentary of Chris Witteman, Senior Staff Counsel, California Public Utilities Commission, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

⁹¹ Letter from Consumer Affairs Branch, California Public Utilities Commission, to Senate Commerce Committee Majority Counsel (Jan. 31, 2013).

⁹² Calculation of this percentage was based on the total number of wireless subscriber connections in California (34 million), and the United States (326.4 million) in 2012, as reported by CPUC and CTIA respectively. California Public Utilities Commission, *2012 Annual Report* (Feb. 1, 2013); CTIA – The Wireless Association, *Wireless Quick Facts* (last updated June 2014) (online at <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey>). Committee staff was unable to compare California and national wireless subscriber numbers for 2013, as CPUC’s 2013 Annual Report did not include the number of wireless subscriber connections in California.

⁹³ Letter from T-Mobile USA, to Chairman John D. Rockefeller IV, at 5 (June 28, 2013).

2. Consumer Complaint Data

Consumers also reported on wireless cramming via complaints to federal and state law enforcement as well as to carriers and billing aggregators. One billing aggregator reported receiving over 7,000 contacts from consumers in 2012 alone, over 30% of which involved requests for refunds.⁹⁴ A FTC review of complaints from the Consumer Sentinel database, one of the major national resources for compiling local, state, and federal consumer complaints, showed over 2,000 complaints of unauthorized charges on wireless bills between 2010 and 2013.⁹⁵

In addition, in a 2013 survey conducted by the Office of the Attorney General of Vermont, 60% of respondents reported that the third-party charges found on their wireless telephone bills were unauthorized.⁹⁶

Industry representatives have argued that complaint numbers were low and that the incidence of cramming on wireless bills was insignificant.⁹⁷ However, consumer complaint tallies likely reflect numbers far lower than actual cramming occurrences. Evidence shows that consumers are frequently unaware that third-party charges are appearing on their telephone bills. FTC Commissioner Maureen Ohlhausen elaborated on this point as follows:

Indeed, we are aware of thousands of consumer complaints about unauthorized charges on wireless bills. And we believe that these complaints may well under represent the problem or under report the problem. From surveys done in the landline cramming context, we know that many consumers are unaware that third parties can place charges on their phone bills. We also know that consumers often fail to spot unauthorized charges on their bills. They may simply look at the overall bill amount and pay in full without doing a line-by-line review; or they may read the bill and fail to spot the charges because they're buried deeply within the bill or listed in generic sounding categories, such as premium services.⁹⁸

Committee staff review of consumer complaints substantiates this viewpoint. Individual consumers often reported only finding the charges after paying them for extensive periods of

⁹⁴ mBlox Response to Senate Commerce Committee (Mar. 25, 2014) (chart titled "US Cases (Jan-1-2012 – March-31-2013)").

⁹⁵ Federal Trade Commission, *Consumer Sentinel Network Data Book for January – December 2012*, at 84 (Feb. 2013) (showing 784 complaints for mobile unauthorized charges in 2010); Federal Trade Commission, *Consumer Sentinel Network Data Book for January – December 2013*, at 84 (Feb. 2014) (showing complaints for mobile unauthorized charges was 626 in 2011, 714 in 2012, and 363 in 2013).

⁹⁶ Center for Rural Studies at the University of Vermont, *Mobile Phone Third-Party Charge Authorization Study* (May 5, 2013). Following the release of survey results, CTIA engaged an expert to conduct an analysis of the Vermont Study. The analysis highlighted concerns with the methodology used for the study. The analysis was submitted to the Federal Trade Commission by CTIA on June 24, 2013.

⁹⁷ See, e.g., Federal Communications Commission, CC Docket No. 98-170, Comments filed by AT&T, Inc. (July 20, 2012), (Dec. 16, 2013); T-Mobile USA Reply Comments (July 20, 2012); and Verizon Wireless (June 25, 2012).

⁹⁸ Opening Remarks by Commissioner Maureen Ohlhausen, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

time. For example, one consumer complained, “I was billed for 18 months for \$9.99 (\$10.76 after taxes) for something I had no clue about and up till [sic] today when I reviewed my bill I noticed these charges.” Another consumer reported, “Having automatically paid my bills for one year, I unfortunately just learned I was paying for unsolicited text messages for over a year.”⁹⁹

Indeed, the complaint filed by the FTC against T-Mobile alleges that the bill statements received by customers did not adequately disclose PSMS charges.¹⁰⁰ Customers reviewing their bill online allegedly could not see these charges by viewing a summary of the charges; only by clicking a series of links could they find premium service charges.¹⁰¹ Figure III below is a graphic from the FTC complaint in this case illustrating how the charges allegedly were shown on the consumers’ paper statements.

⁹⁹ Sprint Nextel Response to Chairman John D. Rockefeller IV (Mar. 22, 2013).

¹⁰⁰ Complaint for Permanent Injunction and Other Equitable Relief, *Federal Trade Commission v. T-Mobile USA, Inc.*, W.D. Wa., at 4-9 (No. 2:14-cv-00967) (July 1, 2014).

¹⁰¹ *Id.* at 5-6.

FIGURE III: T-MOBILE BILL SUMMARY¹⁰²

EXCERPTS FROM AN ACTUAL T-Mobile BILL

Page 1 hides unauthorized 3rd party charges:

Summary	
Item	Amount
Previous Balance	96.71
Prnt Rec'd - Thank You	(96.71)
	-
Monthly Recurring Chgs	73.32
Credits & Adjustments	(10.00)
Usage Charges	9.99
Other Charges	4.83
Taxes & Surcharges	14.97
INCLUDES UNAUTHORIZED CHARGES FOR TRIVIA TEXT ALERTS	
Total Current Charges	\$93.11
Current Charges Due By	2/07/13
Grand Total	\$93.11



123 pages later . . .

PREMIUM SERVICES						
Date	Content Provider	Time	Description	Usage Charges	Total	
OTHER SERVICE PROVIDER CHARGES						
1/11/13	Shaboom Media	6:59pm	8888906150 BrnStorm23918	9.99	9.99	
SUBTOTAL					9.99	

SAYS NOTHING ABOUT TRIVIA TEXT ALERTS

Premium charges were not individually listed in the summary section of the bill. Though they were itemized in a “Premium Services” section several pages into the bill, the information was presented in a way that did not adequately explain that the charge was for a recurring subscription service authorized by the consumer.¹⁰³ If these allegations are true, it is entirely possible that many consumers over a number of years had paid for third-party charges they did not authorize.

¹⁰² *Id.* T-Mobile recently represented to Committee majority staff that the company has changed the way these charges are depicted in their wireless bills. Briefing by T-Mobile USA to Senate Commerce Majority Staff (July 17, 2014).

¹⁰³ *FTC v. T-Mobile*, *supra* note 100, at 6-9.

3. State and Federal Actions

The charges detailed in numerous state and federal law enforcement actions also underscore the broad consumer impact of wireless cramming. These cases have charged that consumers have been victims of cramming schemes costing them hundreds of millions of dollars. For example:

- In 2011, the Attorney General of Texas filed a lawsuit against Eye Level Holdings, LLC, alleging that the defendants collected millions of dollars through the placement of unauthorized charges on the wireless telephone bills of thousands of Texas residents.¹⁰⁴
- In 2013, Wise Media and its owners agreed to settle FTC allegations that they caused more than \$10 million in consumer harm by placing unauthorized recurring \$9.99 monthly fees on consumers' wireless bills.¹⁰⁵
- In June 2014, a district court issued a stipulated order for a monetary judgment totaling over \$150 million in a case brought by FTC alleging defendants used deceptive websites to cram consumer's wireless bills.¹⁰⁶
- In July 2014, the FTC charged T-Mobile with placing third-party charges on consumers' wireless bills despite clear warnings that the charges were unauthorized, and engaging in billing practices that made it difficult for consumers' to discern fraudulent charges, alleging that these practices cost consumer millions of dollars in injury.¹⁰⁷

Indeed, review of 2011-2013 data provided to the Committee by major billing aggregators regarding revenue generated by content provider clients shows that many of the top revenue generators in this time frame were ultimately the subject of state or federal enforcement actions. According to this data, the subjects of enforcement actions generated approximately 23.5% of total revenue reported to the Committee for this time period – \$289,037,831 of \$1.2 billion.¹⁰⁸

¹⁰⁴ Plaintiff's Original Verified Petition and Application for Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, *Texas v. Eye Level Holdings, LLC, et al.*, Tex. D. Ct., Travis County (No. 1:11-cv-00178) (Mar. 11, 2011).

¹⁰⁵ Press Release, *Mobile Crammers Settle FTC Charges of Unauthorized Billing*, Federal Trade Commission (Nov. 21, 2013) (online at <http://www.ftc.gov/news-events/press-releases/2013/11/mobile-crammers-settle-ftc-charges-unauthorized-billing>).

¹⁰⁶ Press Release, *Operators of Massive Mobile Cramming Scheme Will Surrender More than \$10 M in Assets in FTC Settlement*, Federal Trade Commission (June 13, 2014) (online at: <http://www.ftc.gov/news-events/press-releases/2014/06/operators-massive-mobile-cramming-scheme-will-surrender-more-10m>). The judgment was partially suspended based on defendants' inability to pay the full amount.

¹⁰⁷ Complaint for Permanent Injunction and Other Equitable Relief, *Federal Trade Commission v. T-Mobile USA, Inc.*, W.D. Wa. (No. 2:14-cv-00967) (July 1, 2014).

¹⁰⁸ Defendants named in state and federal enforcement action include: Jesta Digital, Bullroarer, Mobile Media Products, Bune, Wise Media, Tatto, Eye Level Holdings, Anacapa Media LLC, Tendenci Media, Bear Communications LLC, MDK Media, Mundo Media, SE Ventures, GMK Communications, MindKontrol Industries LLC, and Network One Commerce Inc. *Federal Trade Commission v. Jesta*

In short, the cumulative evidence revealed by enforcement actions, consumer complaints, refund rates, and studies, indicates that hundreds of millions of dollars in crammed charges have been placed on consumers' wireless bills over the past several years.

C. Carriers Were on Notice about Cramming and Other Vendor Problems

Carriers should have known at least as early as 2008 that consumers were complaining of cramming on their wireless bills. Beginning in 2008, the Florida Attorney General entered into enforcement settlements with Cingular (AT&T), Verizon, Sprint, and T-Mobile over allegations that unauthorized charges had been placed on their consumers' bills.¹⁰⁹ These settlements created a "best practices" regime intended to ensure that consumers were receiving clear and conspicuous prices and terms of the content being purchased before such charges could be placed on a consumer's wireless bill.¹¹⁰

According to CTIA, shortly after the last settlement was signed in October 2010,¹¹¹ this best practice regime was incorporated into the mobile billing standards against which the industry audited vendors for compliance.¹¹² The CTIA audit reports that followed indicated that, three years after the Florida enforcement cases sounded the alarm about wireless cramming, the overwhelming majority of vendors allowed to charge consumers on wireless billing platforms were not meeting basic standards.

For example, with respect to the monthly reports CTIA provided carriers summarizing in-market auditing, the January 2011 report showed a failure rate of nearly 100% for marketing

Digital, LLC, also d/b/a JAMSTER, D.D.C. (No. 1:13-CV-01272) (Aug. 20, 2013); *Federal Trade Commission v. Tatto, et al.*, C.D. Cal (No. 2:13-cv13-8912-DSF-FFM) (Dec. 5, 2013); *Federal Trade Commission v. Wise Media, LLC, et al.*, N.D. Ga. (No. 1:13cv1234) (Apr. 16, 2013); *Texas v. Eye Level Holdings, LLC, et al.*, Tex. D. Ct., Travis County (No. 1:11-cv-00178) (Mar. 11, 2011); *Texas v. Mobile Messenger U.S. Inc., et al.*, Tex. D. Ct., Travis County (Nov. 6, 2013); *Federal Trade Commission v. MDK Media, Inc., et al.*, C.D. Cal (No. 2:14-cv-05099-JFW-SH) (July 3, 2014).

¹⁰⁹ *AT&T Settles with Florida AG Over Mobile Content Ads*, Mobile Marketer (Mar. 3, 2008); *T-Mobile \$600k Settlement with Florida AG Affects All Mobile Content Marketing*, Mobile Marketer (July 22, 2010); *Sprint Settles Cell Phone Cramming Charges in Florida*, Consumer Affairs (Oct. 8, 2010).

¹¹⁰ *See, e.g., Verizon Settlement with Florida AG Affects All Marketing of Mobile Content*, Mobile Marketer (June 29, 2009); *In the Matter of Verizon Wireless LLC and Alltel Communications, LLC*, Assurance of Voluntary Compliance at 5-13 (June 16, 2009). Specifically, the settlements resulting from the Florida actions require that certain provisions be included in the contracts between the carriers and any companies that "advertise, aggregate billing for, offer and/or sell mobile content." These include: (1) a prohibition on using words like "free," "complimentary," "without charge" or other similar terms without clear and conspicuous disclosure that the consumer will have to pay for a subscription in order to receive the content; (2) specifications for font size and color on all consumer disclosures for web-based advertising for mobile content; and (3) certain price and billing disclosures must be made "above the fold" on the mobile "submit" and "PIN submit" pages. In addition to these best practices, the settlements also required the carriers to establish monetary compensation programs for consumers who had experienced unauthorized third-party billing charges. *Id.* at 4-10, 13-14.

¹¹¹ Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014).

¹¹² *See* Part III.B.1, *supra*.

offers tested – or “intercepted” – by the auditors.¹¹³ Virtually all of the failures¹¹⁴ were for violations classified by CTIA as “severity level one,” meaning “serious consumer harm.”¹¹⁵ While monthly industry audit reports after January 2011 showed declining numbers of compliance failures, it was not until September 2011 that more interceptions were reported to have passed than failed.¹¹⁶ And in January 2012, audits still showed a 25% failure rate.¹¹⁷ After August 2012, the reports indicated passage rates of 95% or higher, meaning that 95% of offers tested complied with CTIA guidelines.¹¹⁸

D. Industry Self-Regulation Has Left Gaps In Consumer Protection

1. The Double Opt-In Safeguard Was Porous

Many of the voluntary policies and practices industry instituted to protect against cramming in the PSMS system are similar to those industry touted in the landline context.¹¹⁹ However, as with law enforcement actions in the 2000s involving landline cramming,¹²⁰ a series of recent state and federal law enforcement cases concerning wireless cramming have highlighted potential vulnerabilities with industry’s voluntary consumer protection system. In

¹¹³ WMC Global for CTIA – The Wireless Association, *In-Market Monitoring Update January 2011*, at 2 (Jan. 2011). According to the report, 18,304 offers were tested. *Id.* at 3. A copy of this report is attached as Exhibit A. In May 2011, the monthly in-market auditing reports began including specific breakdowns of premium messaging testing results and standard rate testing results, but the January 2011 report does not provide that breakdown. CTIA has represented to the Committee that the PSMS testing in January 2011 had a failure rate of 97%.

¹¹⁴ The January 2011 In-Market Monitoring Update showed that 99.57% of interceptions failed at severity level 1. *Id.* at 3.

¹¹⁵ CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.0*, at 6 (June 4, 2012). For example, the most common of the January 2011 violations concerned the “no account holder authorization disclosure” requirement concerning how to disclose that the account holder must authorize purchases. *In-Market Monitoring Update January 2011*, at 2 (Jan. 2011); CTIA – The Wireless Association, *Mobile Commerce Compliance Handbook, Version 1.0* at 8 (June 4, 2012) (describing standards).

¹¹⁶ According to the September 2011 report, 49% of the interceptions failed while 51% passed. WMC Global for CTIA – The Wireless Association, *In-Market Monitoring Update September 2011*, at 3 (Sept. 2011).

¹¹⁷ WMC Global for CTIA – The Wireless Association, *In-Market Monitoring Update January 2012*, at 3 (Jan. 2012).

¹¹⁸ See, e.g., WMC Global for CTIA – The Wireless Association, *In-Market Monitoring Update September 2012*, at 3 (Sept. 2012) (showing 96% of interceptions passed); WMC Global for CTIA– The Wireless Association, *In-Market Monitoring Update October 2012*, at 3 (Oct. 2012) (showing 97% of interceptions passed), WMC Global for CTIA– The Wireless Association, *In-Market Monitoring Update December 2012*, at 3 (Dec. 2012) (showing 98% of interceptions passed). Copies of relevant portions of the January 2012 and December 2012 reports are attached at Exhibit A.

¹¹⁹ For example, similar to the policies described above, for third-party billing on landline phones, phone companies instituted policies providing for screening of vendors, the option for consumers to block third-party billing, and customer complaint thresholds that trigger corrective action. For a detailed discussion of industry self-regulation initiatives to address cramming on wireline phone bills see Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Third-Party Charges on Telephone Bills*, at 30-33 (July 12, 2011).

¹²⁰ *Id.* at 4-5.

particular, recent actions raise concerns regarding the effectiveness of the double opt-in authorization.

As discussed above, industry representatives have argued that a key protection against wireless cramming that was not present in the landline context is the “double opt-in” requirement,¹²¹ as it involves affirmative steps by the consumer that are “immediate,” “current,” and “actionable” before billing can be activated.¹²² However, several cases brought at the state and federal level in the last few years have detailed multiple ways content providers have circumvented the double opt-in. For example:

- According to an FTC action brought in December 2013, content providers operated a scam in which they billed consumers for services that were not authorized through the use of misleading websites. The complaint cites as an example a website that offered to sign up consumers for Justin Bieber concert tickets if consumers provided their phone number, and alleges defendants likely used that phone information to sign up the consumer for services without their knowledge.¹²³
- According to the complaint in a separate FTC action brought in April 2013, consumers received unsolicited text messages from a third-party vendor and were charged on their wireless bills for the vendors’ services regardless of whether the consumers had ignored the text message or had responded via text message that they did not want the services.¹²⁴
- A complaint brought by the Attorney General of Texas in 2011 claimed that the defendants used deceptive websites to entice consumers to enter their wireless telephone numbers. According to the complaint, defendants’ websites would come up as prominent sponsored links when consumers entered generic search queries for information on topics such as “song lyrics.” Defendants’ link would not mention subscriptions or costs, and if consumers clicked on the link they would be taken to a page where they were encouraged to enter their phone number with prominent instructions such as “enter your cell phone number to access the lyrics” without any clear and conspicuous disclosures that consumers were in fact signing up for paid subscription services. The complaint further alleged that, to conceal this flawed enrollment process from regulators, carriers, and consumers re-visiting the site, defendants created “dummy” websites that included larger, brighter, and clearer disclosures on the service cost and subscription nature.¹²⁵

¹²¹ *Comments of CTIA – The Wireless Association*, Federal Communications Commission, CC Docket No. 98-170, at 2 (June 25, 2012); Letter from General Counsel, Verizon Wireless, to Chairman John D. Rockefeller IV, at 2 (July 11, 2012) (noting there is no analogue to the double opt-in in the wireline billing context).

¹²² Commentary of Mike Altschul, General Counsel, CTIA – The Wireless Association, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013).

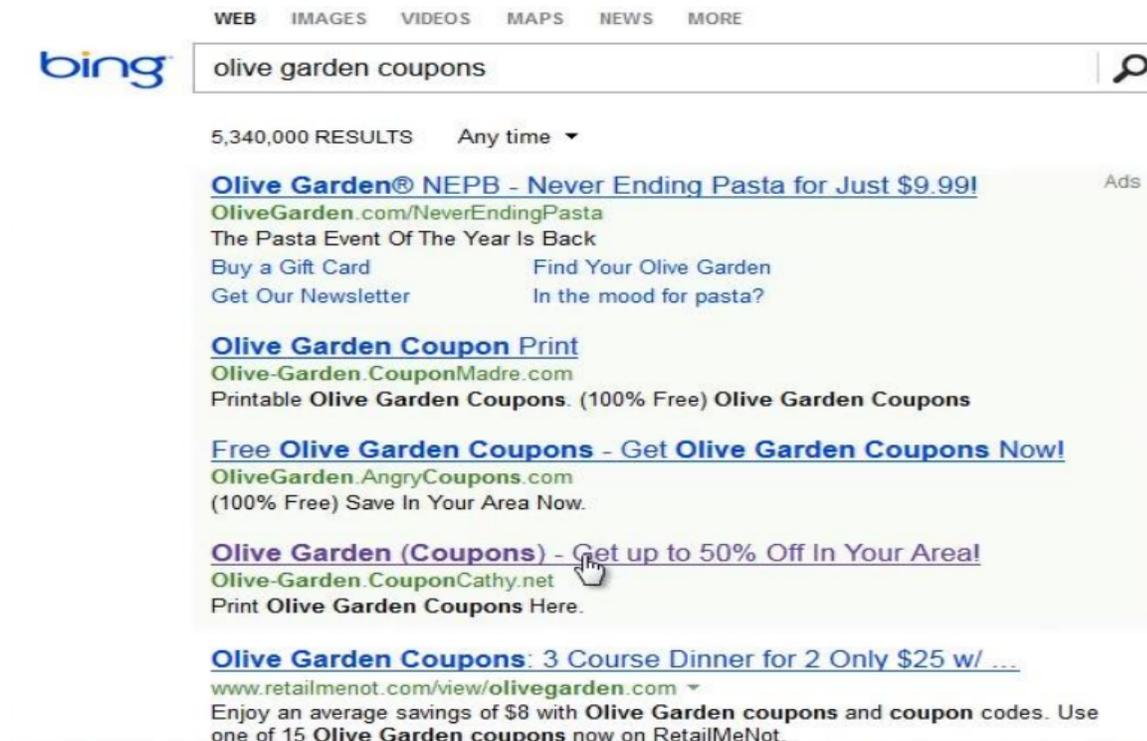
¹²³ Complaint for Permanent Injunction and Other Equitable Relief, *Federal Trade Commission v. Tatto, et al.*, C.D. Cal (No. 2:13-cv13-8912-DSF-FFM) (Dec. 5, 2013).

¹²⁴ Complaint for Permanent Injunction and Other Equitable Relief and Exhibits, *Federal Trade Commission v. Wise Media, LLC, et al.*, N.D. Ga. (No. 1:13cv1234) (Apr. 16, 2013).

¹²⁵ Plaintiff’s Original Verified Petition and Application for Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, *Texas v. Eye Level Holdings, LLC, et al.*, Tex. D. Ct., Travis County (No. 1:11-cv-00178) (Mar. 11, 2011). The case settled in 2012.

In another case brought by the Attorney General of Texas, defendants allegedly worked around the “double opt-in” requirement through the following process depicted with the accompanying graphics reproduced in Figure IV below.¹²⁶ An online search for Olive Garden coupons would turn up a link for a 50% discount coupon, without disclosures regarding any fees or subscriptions charged for enrolling.¹²⁷

FIGURE IV: INTERNET SEARCH PRODUCING PSMS WEBSITE



Consumers who tried to download the coupon were required to enter their personal information including mobile phone number (see depiction of this screen in Figure V below). The complaint alleged that, by entering their mobile phone numbers, consumers unknowingly authorized a \$9.99 per month subscription service providing monthly horoscopes.¹²⁸ Consumers were not provided clear disclosures regarding the actual offer of the subscription service or its relevant terms and conditions unless consumers scrolled down.¹²⁹

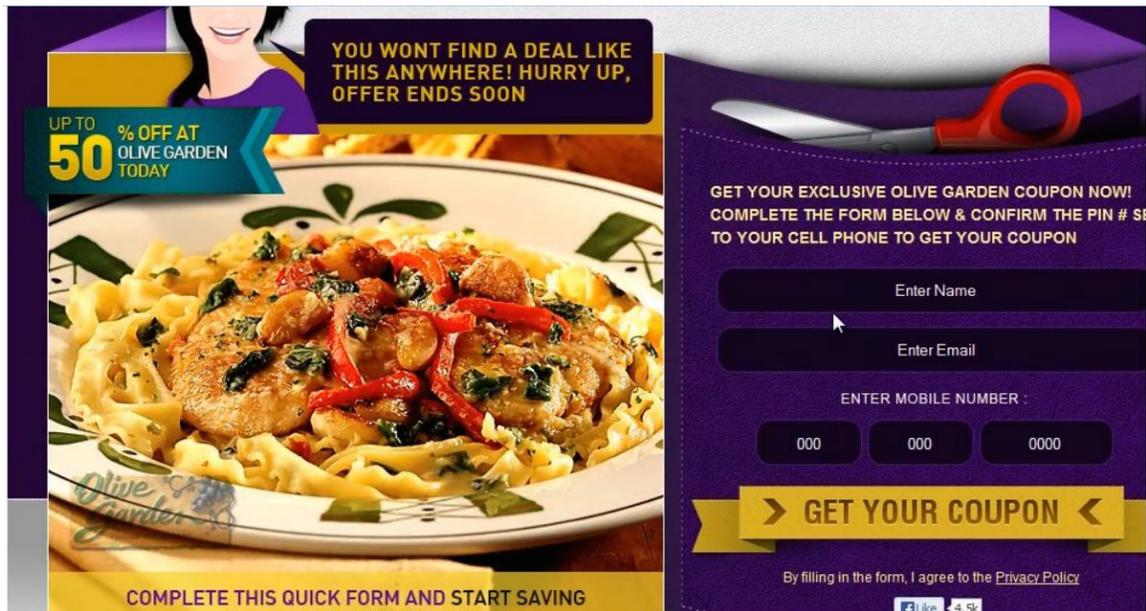
¹²⁶ Plaintiff’s Original Petition, *Texas v. Mobile Messenger U.S. Inc., et al.*, Tex. D. Ct., Travis County, at 12 (Nov. 6, 2013).

¹²⁷ *Id.*

¹²⁸ *Id.* at 14-15.

¹²⁹ *Id.* at 15.

FIGURE V: WEBSITE DRAWING CONSUMERS INTO PSMS CAMPAIGN



In this case, the Texas Attorney General also alleged that content providers lured unknowing consumers to subscribe for deceptive PSMS campaigns through the use of website addresses that contained common typos and misspellings of the addresses of legitimate websites. These websites would encourage consumers to share personal information including their phone numbers in exchange for a promised gift card.¹³⁰

Industry representatives have underscored that wireless cramming enforcement cases have involved conduct that circumvents consent mechanisms, and that generally the double-opt in mechanism was sound.¹³¹ However, conduct described in the above cases allegedly continued for time periods as long as several years, indicating substantial weaknesses in the wireless industry’s ability to root out abuses of consumer authorization requirements.

¹³⁰ *Id.* at 18-22.

¹³¹ *See, e.g.,* Commentary of Mike Altschul, General Counsel, CTIA – The Wireless Association, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013) (stating that the negative option, where companies would instruct the consumer to reply “stop” or be charged, in the double opt-in process, which was utilized by many of the subjects in law enforcement proceedings, was “not compliant with the industry best practices” and use of this negative option was “not playing by the rules”). *See also* Commentary of John Bruner, Chief Operating Officer, Aegis Mobile, Federal Trade Commission, *Mobile Cramming, An FTC Roundtable* (May 8, 2013) (stating, “[W]hat we see in the market is not a violation of the double opt-in where it’s being skipped necessarily. What we usually see is that consumers are either, through stacked marketing or deceptive advertising, double opting in and not realizing that they had purchased something. And, so, you know, the process, the physical process itself seems to be a very sound process for purchase. It’s more the method leading up to getting a consumer to perform that function.”).

2. Tolerance for High Consumer Refund Rates Raises Questions about Carrier Commitment to Preventing and Addressing Cramming

All four major carriers cited consumer refund thresholds as a tool for spotting potential vendor misconduct. However, the thresholds and response actions triggered by breach of these thresholds varied widely in the policies carriers described to the Committee.¹³² Documents produced to the Committee by billing aggregator Mobile Messenger regarding a subset of its vendors provided a further window into the role that refund threshold policies played in the industry's oversight of the PSMS billing system.¹³³ Review of these documents revealed that carriers saw extremely high refund rates and high monthly refund totals for some vendors and were not consistent in how they followed up on red flags concerning vendor misconduct.

a. Carrier Policies on Refund Thresholds

Verizon Wireless, AT&T, Sprint, and T-Mobile established different refund threshold levels for triggering additional vendor review, and their policies also varied regarding specific prescribed follow-up steps. For example, Verizon Wireless's policy provided that if the refund rate for any one program in any month is between 5% and 7.99%, all PSMS campaigns managed by that vendor would be suspended, and if the refund rate exceeded 8%, all PSMS campaigns of the vendor would be terminated.¹³⁴ Billing aggregator documents indicate that the policy applied to shortcodes on Verizon's network was that suspension for refunds between 5% and 7.99% meant a bar on acquiring new subscribers for a period of 90 days.¹³⁵ The policy applicable once refunds exceeded 8% involved both a bar on new subscribers and a requirement that existing subscribers be unsubscribed for shortcodes with subscriptions that brought in an average revenue of at least \$5000 over the previous three months.¹³⁶

AT&T, on the other hand, stated that it did not have a static threshold for refund rates but rather it adjusted the threshold "over time to account for changes in the overall refund rate as observed."¹³⁷ The company further stated it had a general disciplinary policy that could involve "suspending or de-provisioning the short code, and/or terminating the content provider" from the carrier's network, but these steps were not tied to specific threshold violations.¹³⁸ Billing aggregator documents indicate that as of May 2013, the policy applied to shortcodes on AT&T's

¹³² See Section IV.B.1 for discussion of industry and consumer advocate views on the significance of refund rates.

¹³³ Mobile Messenger Subpoena Response to Chairman John D. Rockefeller IV (Mar. 31, 2013), (Apr. 21, 2014), (Apr. 22, 2014). Because documents produced to the Committee concerned a small number of vendors, findings of this review provide a sample rather than a comprehensive review of carrier practices, and a review of communications relating to other vendors would be necessary to draw broad conclusions about an individual carrier's practices generally.

¹³⁴ Letter from Assistant General Counsel of Verizon Wireless, to Senate Commerce Committee Majority Counsel, at 8 (July 12, 2013).

¹³⁵ E-mail from Mobile Messenger Sales Employee to Mobile Messenger Account Manager (May 30, 2013) (with subject line: "05/29/2013 Refund Report for AT&T/Sprint/T-Mobile/VZW (Anacapa)") (AG-MM-COMM-043461-043464).

¹³⁶ *Id.*

¹³⁷ Letter from Executive Vice President, AT&T, to Chairman John D. Rockefeller IV, at 4 (July 2, 2013).

¹³⁸ *Id.*

network was to “enforce a 30-day suspension on any shortcode with a combination of a failed audit and a refund rate of 18%.”¹³⁹

Sprint reported that its policy provided for a “combination of metrics” including refund rates to assess noncompliance, and was penalizing with “lower revenue share” those aggregators that work with vendors demonstrating noncompliance or a refund rate greater than 10%.¹⁴⁰ According to billing aggregator documents from May 2013, the policy applied to shortcodes on Sprint’s network was that a refund rate between 0% and 7% meant incentives and bonuses might apply; refunds between 7.01% and 12% merited a “normal payout,” and refunds greater than 12.01% meant Sprint would apply a “25% penalty on the average monthly retail revenue ... for the three-month period and risk of code termination.”¹⁴¹

Finally, T-Mobile stated that its refund threshold was 15%, at which point aggregator partners and vendors would be “penalized financially in accordance with the terms of the aggregator’s contract.”¹⁴² Additional detail provided by billing aggregator documents indicates that the policy applied to shortcodes on T-Mobile’s network was that T-Mobile would charge a vendor \$10 for each refund/customer care call after refund rate surpassed 15%;¹⁴³ in addition, T-Mobile would apply a multi-step “Refund Performance Improvement Plan” (PIP) if a vendor’s refund rate exceeded 15% and involved at least \$10,000 in “excessive refund fees.”

The documents indicate that the PIP program involved placing the vendor on a “watch list” for 12 months for remediation steps before T-Mobile would terminate the campaign.¹⁴⁴ Once on the watch list, the vendor had three months to address the high refund rate or else in month four, new subscribers would be suspended for a one-month period. The vendor could resume new subscriptions in month five after this suspension, and had three additional months to address the refund rate. If, after month seven, the vendor still qualified for the “watch list,” the PIP program applied a two-month suspension of new subscribers in months eight and nine. The vendor could resume new subscriptions in month 10, but the campaign at issue would be terminated after month 12 if the vendor still met PIP criteria.¹⁴⁵

¹³⁹ E-mail from Mobile Messenger Sales Employee to Mobile Messenger Account Manager (May 30, 2013) (with subject line: “05/29/2013 Refund Report for AT&T/Sprint/T-Mobile/VZW (Anacapa)”) (AG-MM-COMM-043461-043464).

¹⁴⁰ Letter from Vice President, Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 5 (June 28, 2013).

¹⁴¹ E-mail from Mobile Messenger Sales Employee to Mobile Messenger Account Manager (May 30, 2013) (with subject line: “05/29/2013 Refund Report for AT&T/Sprint/T-Mobile/VZW (Anacapa)”) (AG-MM-COMM-043461-043464).

¹⁴² Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 5 (June 28, 2013).

¹⁴³ E-mail from Mobile Messenger Sales Employee to Mobile Messenger Account Manager (May 30, 2013) (with subject line: “05/29/2013 Refund Report for AT&T/Sprint/T-Mobile/VZW (Anacapa)”) (AG-MM-COMM-043461-043464).

¹⁴⁴ E-mail from Mobile Messenger Account Manager to Vendor Employee (Aug. 4, 2011) (with subject line: “FW: Client Alert – Carrier Alert: T-Mobile – Modifications to Their Refund Performance Improvement Plan”) (AG-MM-COMM-016777-016779).

¹⁴⁵ *Id.*

It is worth noting that even the lowest stated refund threshold rates of 5%-7.99% that were set forth in policies carriers described to the Committee are substantially higher than the threshold used for chargebacks levels on consumer credit card bills as a trigger for follow-up with the merchant whose chargebacks are at issue. For example, under VISA's chargeback policy, merchants will receive a notification and request for explanation if the ratio of transactions charged back to total transactions exceeds 1%, where the merchant has had over 100 transactions and 100 chargebacks in that month.¹⁴⁶

Documents received by the Committee from Mobile Messenger included a number of examples demonstrating the follow up actions taken by carriers after adverse audit findings or other red flags regarding particular shortcodes.¹⁴⁷ However, documents also indicated there were instances where carriers were lax in overseeing or enforcing their own stated policies. This issue is illustrated in an email chain between AT&T and Mobile Messenger in October 2013 when AT&T sent Mobile Messenger a notice of termination for content provider Anacapa, a client of Mobile Messenger, due to "excessive CTIA Sev 1 [severity 1] audit failures."¹⁴⁸

In the course of the email chain, an AT&T representative gives more explanation for the termination. He begins by noting that when Anacapa requested access to AT&T's billing platform in November 2012, Anacapa "did not pass our internal vetting process, ... and we rejected them from running PSMS campaigns."¹⁴⁹ However, AT&T nonetheless let one of the Anacapa shortcode campaigns have access to the AT&T billing platform, as in fact AT&T had "failed to reject" that shortcode. Anacapa was able to bill consumers on AT&T's platform well into 2013, despite two AT&T suspensions of the Anacapa shortcode in the first part of 2013. Further, in May 2013 AT&T "drafted" a termination notice but again "failed to deliver" it.¹⁵⁰ The October 2013 email summary also noted that AT&T had found that Anacapa had received twenty severity 1 – "serious consumer harm" – audit findings across several of its shortcodes

¹⁴⁶ Briefing by VISA Representatives to Senate Commerce Committee Majority Staff (July 10, 2014).

¹⁴⁷ See, e.g., Letter from Verizon Wireless Director to Mobile Messenger Compliance & Consumer Protection Employee (Oct. 20, 2011) (AG-MM-COMM-030220-22) (describing that Ontario Corp. had "repeatedly violated the requirements applicable to premium messaging campaigns" and "given the repeated and serious nature of the violations, Verizon Wireless ha[d] decided that all premium messaging campaigns managed by the content provider must be terminated"); Spreadsheet created by Mobile Messenger listing status on several shortcodes of Sprint (last saved Aug. 10, 2011) (AG-MM-COMM-021051) (noting 5 terminated codes and several codes that were temporarily suspended); E-mail from AT&T Senior Account Manager to Mobile Messenger Employees (Jan. 14, 2013) (AG-MM-COMM-125203-4) (noting AT&T termination of all short codes associated with AVL marketing); E-mail from T-Mobile Compliance to Mobile Messenger Employees (Oct. 4, 2013) (AG-MM-COMM-143991) (noting 3 shortcodes that received 3 strikes under T-Mobile's PIP policy and directing Mobile Messenger employees to "immediately terminate all billing and related services currently operating" and the short codes).

¹⁴⁸ E-mail from WMC Global AT&T Account Manager to Mobile Messenger Employees (Oct. 15, 2013) (AG-MM-COMM-057077-057080). This document is attached at Exhibit B.

¹⁴⁹ E-mail from AT&T Mobility Marketing Manager to Mobile Messenger Employees (Oct. 16, 2013) (AG-MM-COMM-056884-056885).

¹⁵⁰ *Id.*

from October 2012 to October 2013, including two Severity 1 findings on the shortcode that was apparently erroneously allowed to use the AT&T network.¹⁵¹

b. Some Vendors Had Exceedingly High Refund Rates that at Times Spanned Several Months

Documents reviewed by the Committee regarding a subset of vendors who contracted with billing aggregator Mobile Messenger indicate that some vendors experienced high monthly refund rates that in some cases topped 50% of monthly revenues and amounted to hundreds of thousands of dollars in refunds in a single month. For example, in a July 2011 Mobile Messenger email to vendor representatives, Mobile Messenger employees reported violations of T-Mobile thresholds on 11 different shortcodes for the preceding month, including one shortcode with a 50.5% refund rate and \$55,974 in refunds for the month, and others with 43.7%, 38.4%, and 36.1% rates. The refunds for the 11 listed shortcodes totaled over \$450,000 that month.¹⁵²

A similar Mobile Messenger email notification to vendor representatives in October 2012 notes that 11 shortcodes had exceeded AT&T's 18% refund threshold in the preceding month, including one shortcode with a refund ratio of 56.8% and \$124,759 in refunds for the month, another with a ratio of 31.4% and \$100,949 in refunds. The 11 shortcode refunds that month together totaled nearly \$600,000.¹⁵³ Documents indicate that other carriers also had high refund rates and high refund totals.¹⁵⁴

Documents also show that refund rates on the same shortcode at times exceeded carrier thresholds for a number of months at a time. For example, Mobile Messenger sent emails to vendor representatives notifying them that refunds on shortcode 67145 exceeded AT&T's threshold in February 2012 (with a 33.9% refund rate);¹⁵⁵ March 2012 (40.6%);¹⁵⁶ and May 2012

¹⁵¹ *Id.*

¹⁵² E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees (July 5, 2011) (AG-MM-COMM-112226-112227) (the 11 shortcode refunds totaled \$457,252.29). A copy of this e-mail is attached at Exhibit C. As indicated by this e-mail and other Mobile Messenger documents, NeoImage personnel had e-mail addresses at "mundomedia.com." See also Mobile Messenger Spreadsheet Response to Subpoena Item 2a and 2c (AG-MM-COMM-001128) (Apr. 21, 2014) (listing company directors with email addresses, including NeoImage personnel with mundomedia.com addresses).

¹⁵³ E-mail from Mobile Messenger Account Management Employee to NeoImage Employees (Oct. 9, 2012) (AG-MM-COMM-585462-585463) (the 11 shortcode refunds totaled \$594,479). This e-mail is attached at Exhibit C.

¹⁵⁴ See, e.g., E-mail notification from Mobile Messenger Compliance & Analytics to NeoImage Employees (Oct. 4, 2011) (AG-MM-COMM-024918-024919) (noting that 8 of their shortcodes violated Sprint's threshold, with the highest rate at 28.79% and the refunds for all 8 totaling over \$600,000 for the three-month period); E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees (June 7, 2011) (AG-MM-COMM-099369) (indicating that 6 shortcodes had refund rates exceeding Verizon's thresholds in May, with the highest rate reported as 22.23% and refunds for all 6 totaling over \$340,000). These e-mails are attached at Exhibit C.

¹⁵⁵ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Mar. 9, 2012) (AG-MM-COMM-590211-590212).

¹⁵⁶ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Apr. 2, 2012) (AG-MM-COMM-584986-584987).

(18.1%).¹⁵⁷ Mobile Messenger sent similar notification emails that refunds on shortcode 85820 exceeded T-Mobile's threshold in December 2010 (20.06%);¹⁵⁸ February 2011 (34.13%);¹⁵⁹ and March 2011 (31.13%).¹⁶⁰

c. Case Study on Vendor with High Refund Rates: Variation in Carrier Response Underscores Broad Latitude Afforded by the Self-Regulatory System

Documents indicate that different carriers employed different practices regarding follow-up on red flags such as high refund rates and adverse audit findings associated with shortcodes. For example, in October 2011, Verizon wrote to Mobile Messenger regarding several shortcodes used by Mobile Messenger client NeoImage.¹⁶¹ This group of shortcodes also included certain shortcodes that appeared on high refund rate notices sent by Mobile Messenger to vendor employees concerning all four major carriers in 2011.¹⁶²

Verizon's October 2011 letter requested that, because of "the repeated and serious nature" of content provider violations of requirements concerning premium messaging campaigns, "all of the premium messaging campaigns managed by the content provider must be terminated," and Verizon Wireless "will not consider reactivation of the shortcodes, or any new campaigns from the content provider."¹⁶³ The Verizon letter required the content provider to

¹⁵⁷ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (June 5, 2012) (AG-MM-COMM-568009-568010). The Mobile Messenger document production did not appear to include an AT&T excess refund rate notification for the month of April 2012.

¹⁵⁸ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Jan. 11, 2011) (AG-MM-COMM-060591).

¹⁵⁹ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Mar. 3, 2011) (AG-MM-COMM-146312-146313).

¹⁶⁰ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Apr. 4, 2011) (AG-MM-COMM-220607-220608).

¹⁶¹ Letter from Verizon Wireless Director to Mobile Messenger Compliance & Consumer Protection Employee (Oct. 20, 2011) (AG-MM-COMM-032198-032199) (listing shortcodes 91097, 33999, 72449, 40684, 25692, 89147, 88922, 21500, 86358, 56255, 53405, and 62131).

¹⁶² E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees, Subject: Notice: AT&T Refund Ratio Exceeded (Mar. 2, 2011) (AG-MM-COMM-145222-145223) (showing shortcode 89147 February refund rate was 45.52%); E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees, Subject: Notice: AT&T Refund Ratio Exceeded (Apr. 4, 2011) (AG-MM-COMM-220637-220638) (showing shortcode 91097 March refund rate was 50.65%); E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees, Subject: Notice: Sprint Refund Ratio Exceeded (Aug. 1, 2011) (AG-MM-COMM-012239) (noting shortcode 53405 April 2011-June 2011 refund ratio was 31.67% and 56255 was 15.95%); E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees, Subject: Notice: Verizon Refund Ratio Exceeded – June 2011 (July 5, 2011) (AG-MM-COMM-112223-112224) (noting June refund rate for 56255 was 10.74%, 33999 was 15.52%, 86358 was 11.8%, and 88922 was 11.15%); E-mail from Mobile Messenger Compliance & Analytics to NeoImage Employees, Subject: Notice: T-Mobile Refund Ratio Exceeded (Sept. 2, 2011) (AG-MM-COMM-290976-290977) (noting shortcode 33999 August refund rate was 19.05%).

¹⁶³ Letter from Verizon Wireless Director to Mobile Messenger Compliance & Consumer Protection Employee (Oct. 20, 2011) (AG-MM-COMM-032198-032199).

block all new subscriptions to the code and opt-out enrolled customers on a rolling basis “at the time their subscriptions otherwise would be renewed.”¹⁶⁴

Consistent with this letter, billing statements for Mobile Messenger client NeoImage indicate that Verizon ceased allowing NeoImage shortcodes to bill on its platform starting in late 2011.¹⁶⁵ However, the billing statements also indicate that the three other major carriers and many others continued to allow NeoImage to charge their customers through March 2013, the last date of statements provided to the Committee for NeoImage. In 2012, NeoImage charged a total of over \$10 million to consumers’ wireless bills across different carrier platforms.¹⁶⁶

The billing statements produced by Mobile Messenger indicate that a number of carriers also continued to allow NeoImage to charge on their platforms for activity on several of the specific shortcodes that Verizon terminated in October 2011. For example, the statement for January 2012 shows that, with respect to campaigns on shortcode 89147, \$107,000 in charges were placed with AT&T, \$33,800 with T-Mobile, and \$21,700 with Sprint.¹⁶⁷ With respect to the same shortcode, the March 2012 billing statement showed \$81,100 in charges placed with AT&T, \$20,600 with T-Mobile, and \$16,300 with Sprint.¹⁶⁸ Documents also indicate that in January 2012 refunds on this same shortcode exceeded refund thresholds for both T-Mobile and AT&T, with a 15.7% refund ratio for T-Mobile,¹⁶⁹ and a 19.01% refund rate for AT&T.¹⁷⁰

This example regarding NeoImage shortcodes illustrates that carriers had wide discretion in responding to indicia of vendor problems such as high refund rates.

¹⁶⁴ *Id.*

¹⁶⁵ See, e.g., Mobile Messenger, *Settlement Statement for NeoImage December 1, 2011-December 31, 2011*, at 10 (Jan. 2012) (showing a \$11.25 balance due for Verizon Wireless); Mobile Messenger, *Settlement Statement for NeoImage January 1, 2012-January 31, 2012*, at 10 (Feb. 2012) (showing a \$10.75 due for Verizon Wireless); Mobile Messenger, *Settlement Statement for NeoImage March 1, 2012-March 31, 2012*, at 7 (Apr. 2012) (Verizon does not appear on the statement).

¹⁶⁶ Mobile Messenger, *Settlement Statement for NeoImage Jan. 1, 2012-Jan. 31, 2012* (Feb. 2012) (AG-MM-042772-042781); Mobile Messenger, *Settlement Statement for NeoImage Mar. 1, 2012-Mar. 31, 2012* (Apr. 2012) (AG-MM-585109-585115); Mobile Messenger, *Settlement Statement for NeoImage Apr. 1, 2012-Apr. 31, 2012* (May. 2012) (AG-MM-562235-562241); Mobile Messenger, *Settlement Statement for NeoImage May 1, 2012-May 31, 2012* (June. 2012) (AG-MM-568311-568318); Mobile Messenger, *Settlement Statement for NeoImage June 1, 2012-June 31, 2012* (July. 2012) (AG-MM-563935-563941); Mobile Messenger, *Settlement Statement for NeoImage July 1, 2012-Aug. 31, 2012* (Sept. 2012) (AG-MM-588084-588098); Mobile Messenger, *Settlement Statement for NeoImage Sept. 1, 2012-Sept. 31, 2012* (Oct. 2012) (AG-MM-192132-102137); Mobile Messenger, *Settlement Statement for NeoImage Dec. 1, 2012-Dec. 31, 2012* (Jan. 2013) (AG-MM-591730-591735) (Mobile Messenger’s production to Committee staff was missing settlement statements for several months for 2012 so NeoImage’s total charge of \$10 million is a conservative total).

¹⁶⁷ Mobile Messenger, *Settlement Statement for NeoImage Jan. 1, 2012-Jan. 31, 2012*, at 3, 5, 7 (Feb. 2012).

¹⁶⁸ Mobile Messenger, *Settlement Statement for NeoImage Mar. 1, 2012-Mar. 31, 2012*, at 2, 3, 4 (Apr. 2012).

¹⁶⁹ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Feb. 2, 2012) (with subject line: Notice: T-Mobile Refund Ratio Exceeded) (AG-MM-COMM-040764-040765).

¹⁷⁰ E-mail from Mobile Messenger Compliance Analytics to NeoImage Employees (Feb. 2, 2012) (with subject line: Notice: AT&T Refund Ratio Exceeded) (AG-MM-COMM-040831-040832).

3. Carriers Placed Questionable Reliance on Billing Aggregators as Oversight Partners

In submissions to the Committee in 2012 and 2013, a number of major carriers emphasized the important and reliable role that billing aggregators played in ensuring that vendors comply with consumer authorization requirements and other industry standards. Sprint noted that in its experience, the company’s “reward/penalty system influences aggregators to work only with reputable content providers and to ferret out non-compliant PSMS campaigns.”¹⁷¹ AT&T assured the Committee that “in November 2012 the double opt-in procedures of all then existing Billing Aggregators were reviewed and certified” as compliant with the company’s consent management program.¹⁷² And T-Mobile asserted last June that “we are aware of no information that aggregator partners have played any role in cramming or otherwise facilitating improper third-party billing.”¹⁷³

Major billing aggregators contacted in the Committee’s inquiry also attested to their role in the industry’s compliance system. For example, Mobile Messenger, one of the leading aggregators, underscored that it is “committed to consumer protection,” with a “dedicated compliance team” to review and test vendor campaigns,¹⁷⁴ and that the company has spent “considerable resources” to ensure that the subscription and billing process and the company’s content provider and advertiser clients abide by the “robust” industry guidelines.¹⁷⁵

However, the allegations in the November 2013 action by the Texas Attorney General¹⁷⁶ raise serious questions about the effectiveness of aggregators as partners to carriers in combatting cramming as well as how closely carriers were scrutinizing aggregator practices. As noted above, in this action, the Texas AG alleged that Mobile Messenger was part of a “deceptive scheme” to trick consumers into signing up for unwanted “services” including ringtones, weekly text messages containing horoscopes and celebrity gossip, and coupons. According to the complaint, Mobile Messenger actively assisted content providers with circumventing consumer protections that carriers implemented, including the double opt-in and thresholds relating to consumer complaints and audit reports.¹⁷⁷

In addition, Mobile Messenger documents reviewed by Committee staff about a subset of Mobile Messenger vendors underscore that the company was in a position to see red flags about worrisome shortcodes and vendors from both the industry-wide audits as well as from reports of

¹⁷¹ Letter from Vice President – Government Affairs, Sprint Nextel, to Chairman John D. Rockefeller IV, at 7 (July 11, 2012).

¹⁷² Letter from Executive Vice President, Federal Relations, AT&T, to Chairman John D. Rockefeller IV, at 7 (July 2, 2013).

¹⁷³ Letter from Vice President, Federal Legislative Affairs, T-Mobile USA, to Chairman John D. Rockefeller IV, at 3 (June 28, 2013).

¹⁷⁴ Mobile Messenger Narrative Response to Chairman John D. Rockefeller IV (May 24, 2013) (MM Confidential 000004, 000050).

¹⁷⁵ Mobile Messenger Narrative Response to Chairman John D. Rockefeller IV (May 24, 2013) (MM Confidential 000050).

¹⁷⁶ Plaintiff’s Original Petition, *Texas v. Mobile Messenger U.S. Inc., et al.*, Tex. D. Ct., Travis County (Nov. 6, 2013). This case remains open at the time of this report.

¹⁷⁷ *Id.*

individual carrier refund rates and vendor penalties.¹⁷⁸ And yet, in the case study discussed above, after one of the major carriers in October 2011 cut off all business with a vendor that had raised non-compliance concerns and been the subject of high refund rates across major carriers, Mobile Messenger continued doing business with the same vendor through 2013.¹⁷⁹ Such actions raise questions about whether Mobile Messenger served as a rigorous oversight partner with carriers in weeding out vendors with records of non-compliance with industry standards.

V. EMERGING THIRD-PARTY WIRELESS BILLING TECHNOLOGIES AND POTENTIAL CONSUMER PROTECTION ISSUES

Though commercial PSMS billing has now virtually ended among the major carriers,¹⁸⁰ it is still possible for consumers to buy digital content online and bill those purchases to their wireless phone accounts. This is generally called the “direct carrier billing” payment option. Direct carrier billing is now offered by a variety of U.S. companies for music, applications, games, movies, and television shows, from retailers such as Sony, Facebook, Skype, and Rhapsody.¹⁸¹

Direct carrier billing for social media and gaming purchases increased 30% year-over-year from 2009-2012.¹⁸² This option could become even more widely available in the future, for goods and services outside of digital content. According to CTIA, additional entities “currently using or planning to adopt” third-party billing include “major news organizations, companies offering video streaming, gaming companies, parking services, and even pizza delivery services.”¹⁸³

In discussions with Committee majority staff, carriers have differentiated between two methods of direct carrier billing: the “storefront” approach and the “billing aggregator” approach. In the “storefront” approach, consumers are given the option of billing their wireless account when making a purchase from a digital distribution platform that offers applications, music, movies, and games created by any number of vendors.¹⁸⁴ Under this billing model, the

¹⁷⁸ See, e.g., E-mail from Mobile Messenger Account Manager to NeoImages Employees (Aug. 24, 2011) (AG-MM-COMM-022790-022795) and E-mail from Mobile Messenger Sales Employee to Mobile Messenger Account Manager (May 30, 2013) (AG-MM-COMM-043461-043464) (cataloguing refund rates across major carriers for different vendors); Letter from Verizon Wireless Director to Mobile Messenger Compliance & Consumer Protection Employee, Re: Urgent Resolution of Violations (Oct. 20, 2011).

¹⁷⁹ See discussion *supra* at Section IV.D.2.c; see also Assignment of Rights and Amendment Among Neo Images, Inc., and Subscriber Management Services, LLC and Mobile Messenger US, Inc. (signed March 19, 2012) (AG-MM-COMM 001964-2031).

¹⁸⁰ Some carriers still support PSMS billing for charitable donations and political contributions. Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by T-Mobile USA to Senate Commerce Majority Staff (July 17, 2014).

¹⁸¹ *Comments of CTIA – The Wireless Association*, Federal Communications Commission, CC Docket No. 98-170, at 4 (Nov. 18, 2013).

¹⁸² *Id.* at 3 (citing *Study: Popularity of Direct Carrier Billing on the Rise*, Mobile Payments Today (Sept. 4, 2012).

¹⁸³ *Id.* at 4-5.

¹⁸⁴ Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014).

carriers rely on the company offering the digital distribution platform to vet the vendors who create the digital content offered in their store.¹⁸⁵ One example of the “storefront” billing method is the Google Play store. Since 2011, consumers have been able to make purchases from the Google Play store and bill them to their wireless account.¹⁸⁶

Outside of the storefront approach, direct carrier billing is also an option for a number of additional vendors who utilize billing aggregators in order to place the charges on consumers’ wireless accounts. In this model, both the carriers and aggregators vet each vendor before the vendor is permitted to bill consumers on their wireless accounts.¹⁸⁷ A handful of these billing aggregators have emerged to act as middlemen between vendors and wireless carriers.¹⁸⁸

With respect to direct carrier billing, to date there are no industry-wide best practices or central monitoring similar to what was in place for PSMS. Instead, oversight of direct carrier billing occurs at the individual carrier level.¹⁸⁹ Policies described by several major carriers in briefings to Committee majority staff include the following features, among others:

- Clear disclosures by the content provider to the consumer regarding the terms of purchase;
- Clear designation of third-party vendor purchases on consumers’ phone bills; and
- Carrier monitoring of refund rates and consumer complaints.

Some carriers also said they place caps on third-party purchases from \$25 to \$80 per month, and for consumers that have more than one wireless line on their plan these caps apply per line.¹⁹⁰

As of now, direct carrier billing is primarily an option for digital content and only represents a small fraction of purchases made via computers and smartphones.¹⁹¹ However, as

¹⁸⁵ Briefing by Google to Senate Commerce Committee Majority Staff (July 11, 2014); Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by T-Mobile USA to Senate Commerce Committee Majority Staff (July 17, 2014).

¹⁸⁶ Briefing by Google to Senate Commerce Committee Majority Staff (July 11, 2014).

¹⁸⁷ Briefing by Boku to Senate Commerce Committee Majority Staff (June 23, 2014); Briefing by BilltoMobile to Senate Commerce Committee Majority Staff (Feb. 24, 2014); Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by T-Mobile USA to Senate Commerce Committee Majority Staff (July 17, 2014).

¹⁸⁸ Examples include, among others, Boku, a San Francisco-based company, and BilltoMobile, a San Jose-based company, both of which contract with major U.S. wireless carriers. See BilltoMobile, Home Page (online at <http://www.billtomobile.com/>); Briefing by BilltoMobile to Senate Commerce Committee Majority Staff (Feb. 24, 2014); Boku, Home Page (online at <http://www.boku.com/>); Briefing by Boku to Senate Commerce Committee Majority Staff (June 23, 2014).

¹⁸⁹ Briefing by CTIA – The Wireless Association to Senate Commerce Committee Majority Staff (June 3, 2014); Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by T-Mobile USA to Senate Commerce Committee Majority Staff (July 17, 2014).

¹⁹⁰ Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014).

¹⁹¹ Briefing by Boku to Senate Commerce Committee Majority Staff (June 23, 2014); Briefing by Federal Reserve Bank to Senate Commerce Committee Majority Staff (July 18, 2014).

noted by the CTIA in comments to the FCC, U.S. companies are increasingly offering direct carrier billing for purchases.¹⁹² Direct carrier billing is a more widely utilized form of purchase internationally¹⁹³ and with the continued growth in the unbanked and underbanked population in the United States, it is conceivable that direct carrier billing could become a more widely utilized payment option in the future.

Currently, major carriers assert that they are seeing minimal indicia of consumer complaints involving direct carrier billing, including very few consumer complaints and refund rates around 1%-1.5%.¹⁹⁴ However, in light of the extensive evidence of cramming that has occurred to date in both the landline and wireless contexts, and the potential that a growing number of consumers may use this payment option in the future, this staff report recommends that industry and policymakers:

- Vigilantly monitor evolving third-party billing practices to make sure that bad actors do not find ways to penetrate barriers to cramming on these new systems; and
- Evaluate consumer protection gaps that occurred in the landline and PSMS contexts to establish consistent policies going forward that will provide consumers with appropriate transparency in the third-party billing process and a clear avenue of recourse where unauthorized charges occur.

¹⁹² See n. 181, *supra*.

¹⁹³ Briefing by Boku to Senate Commerce Committee Majority Staff (June 23, 2014); Briefing by Federal Reserve Bank to Senate Commerce Committee Majority Staff (July 18, 2014).

¹⁹⁴ Briefing by Sprint Nextel to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by Verizon Wireless to Senate Commerce Committee Majority Staff (July 16, 2014); Briefing by T-Mobile USA to Senate Commerce Committee Majority Staff (July 17, 2014).

Exhibit

A



In-Market Monitoring Update

For CTIA-The Wireless Association®

January 2011

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January at a Glance

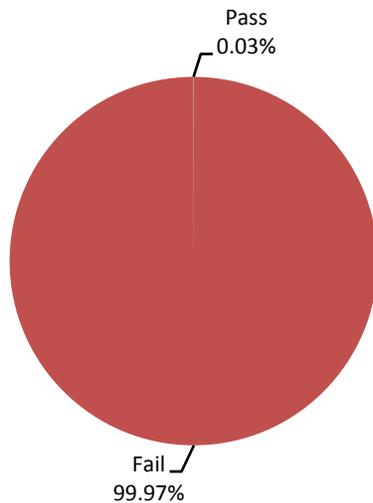
- This presentation provides an update on in-market monitoring results, based on current CTIA audit standards, for January 2011
- Total failures amounted to 18,298 among 18,304 interceptions, resulting in a roughly 100% overall failure rate
- “No account holder authorization disclosure” was the most common violation in January with 16,486 occurrences
- Other significant violations included:
 - “No legal age or parental permission disclosure,” found in 59% of interceptions
 - “Disclosure that user agrees to T&Cs displayed inconspicuously,” found in 59% of interceptions

Overall Market Summary

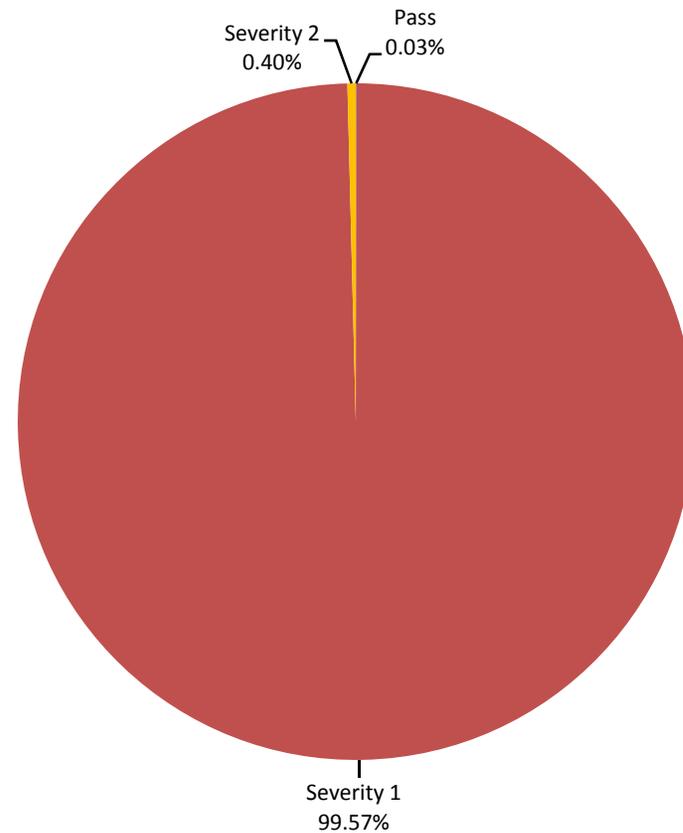
Interceptions Breakdown

- Total interceptions: 18,304
- Passed: 6
- Failed: 18,298
- All but six interceptions failed and more than 99% failed at Severity 1

Overall Pass/Fail Breakdown



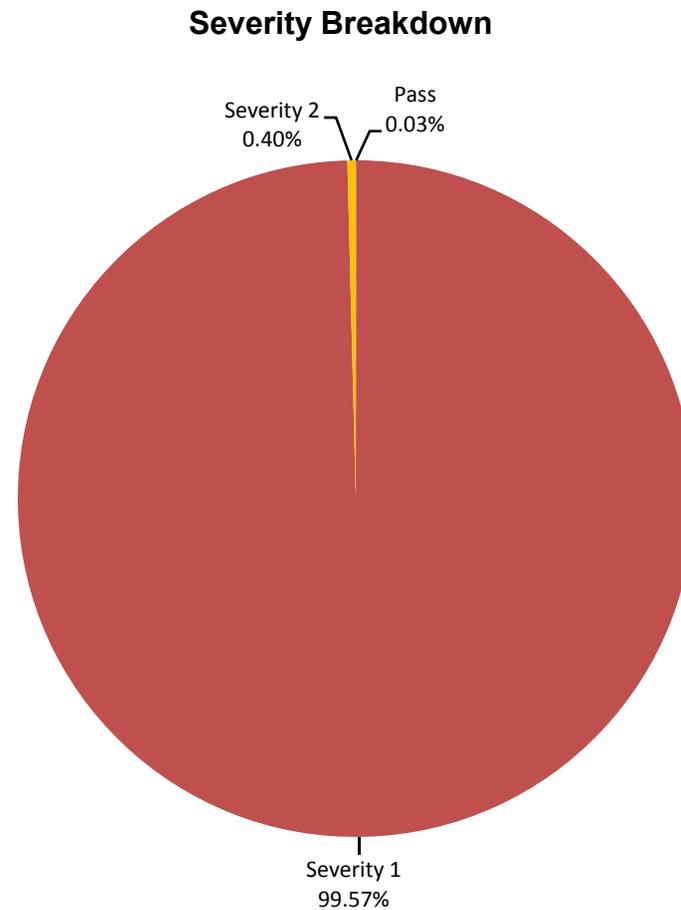
Severity Breakdown



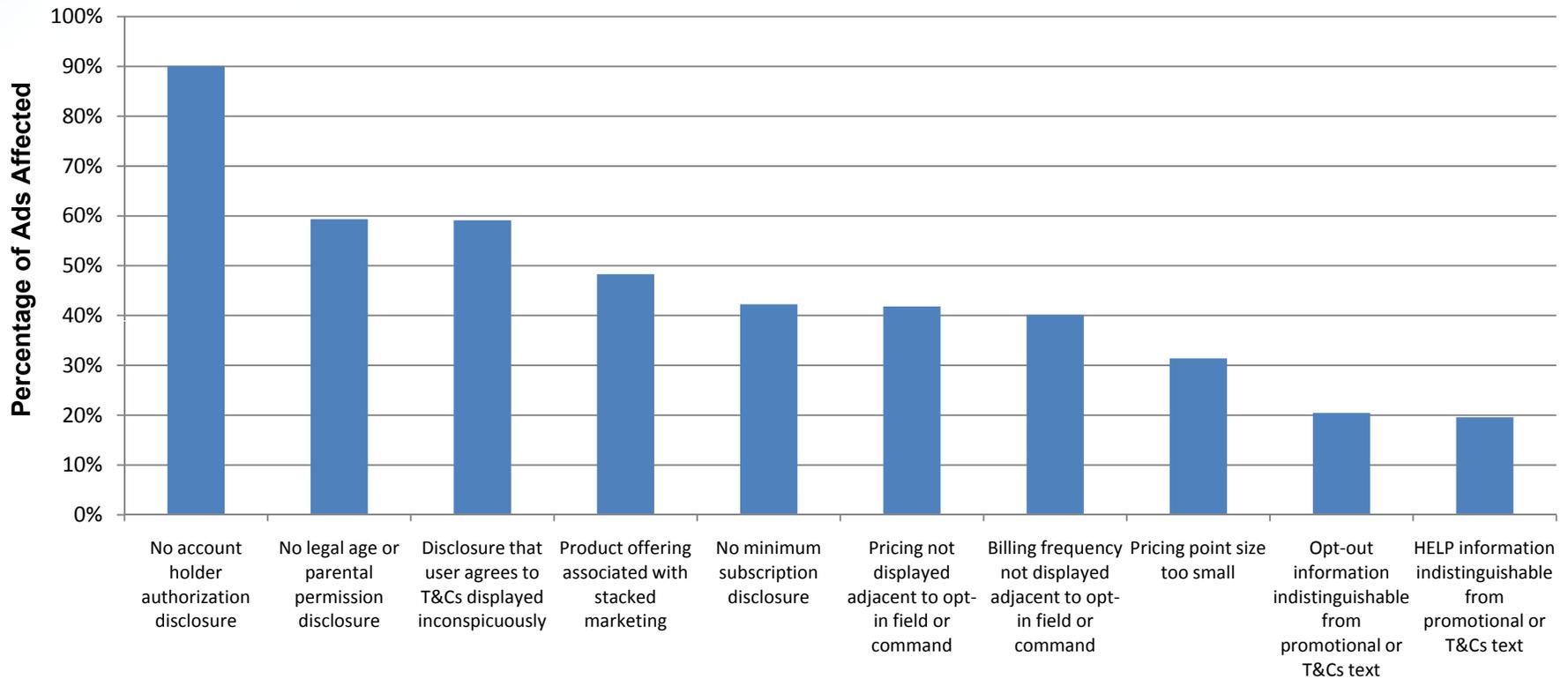
Overall Failures by Severity

Findings

- Severity 1: 18,225
 - “No account holder authorization disclosure,” with 16,486 occurrences, was the most common violation overall, accounting for 14% of total violations
- Severity 2: 73
 - “No minimum subscription disclosure,” with 7,735 occurrences, was the most common Severity 2 violation



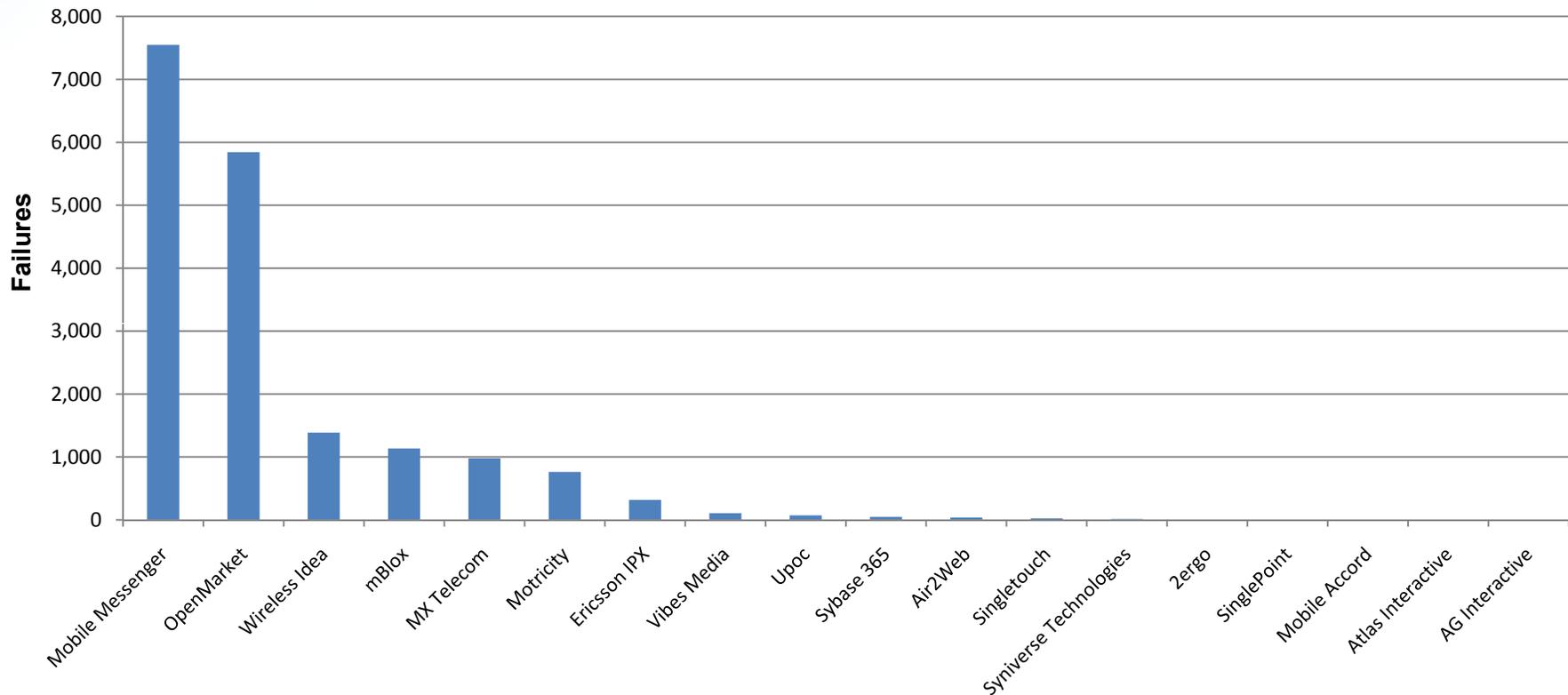
Violations Occurrence



Graph depicts top 10 violations and the percentage of PSMS ads affected by them

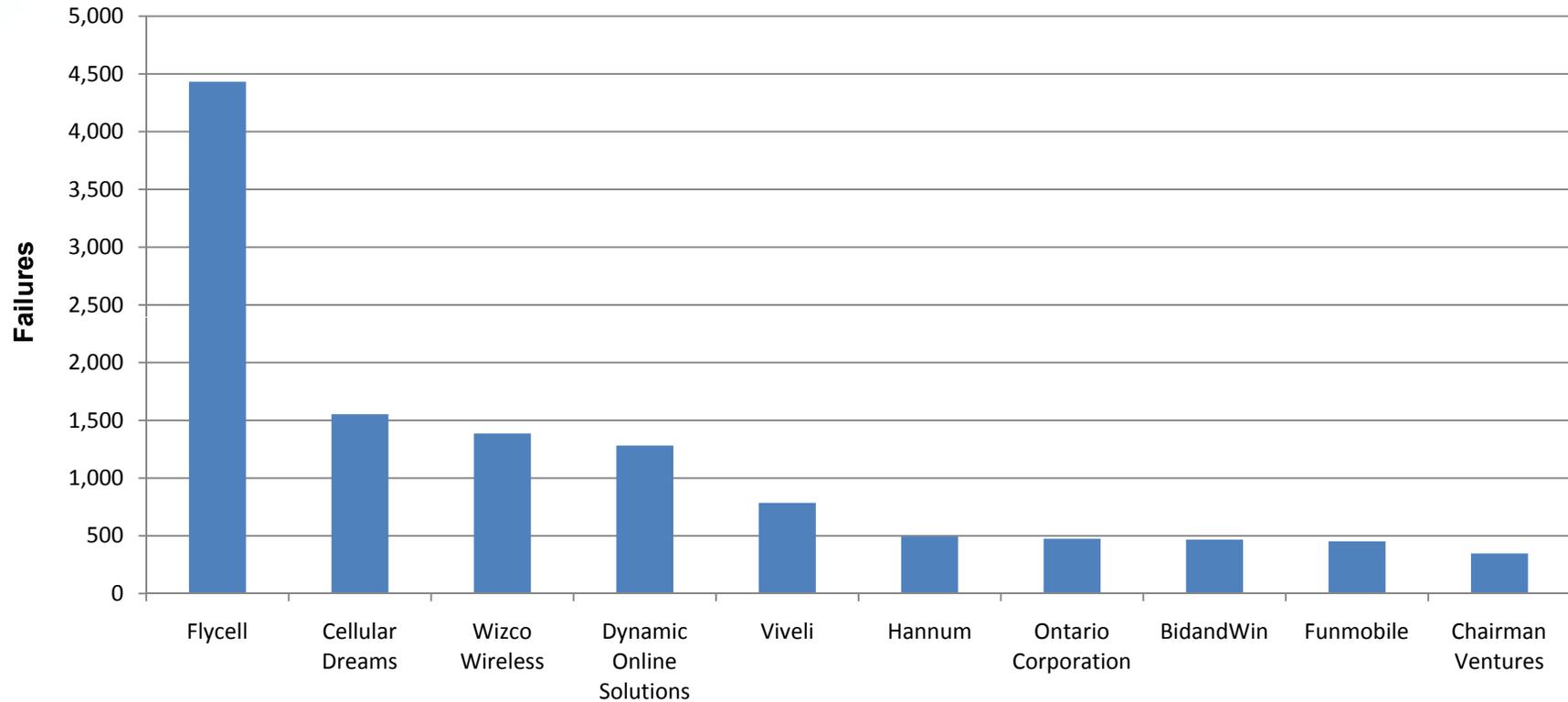
The top violation, “No account holder authorization disclosure,” affected 90% of all ads, driving the high overall failure rate

Failures by Aggregator



- Mobile Messenger hosted the most compliance issues this month, accounting for 41% of total failures
- AG Interactive and Atlas Interactive accounted for the fewest, with one failure each

Failures by Content Provider



Graph depicts top content providers accounting for most of the failures

Flycell had the most failures again in January, with 4,433, and accounted for 24% of total failures

Month End Report



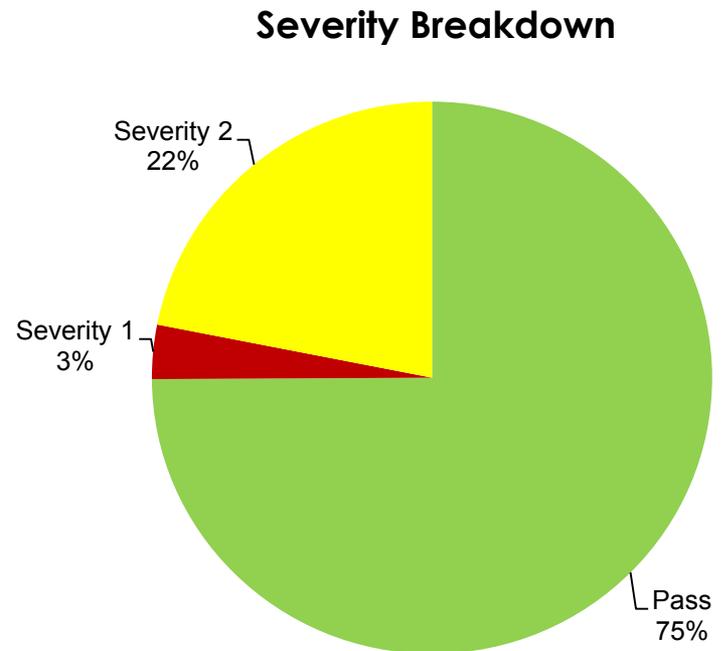
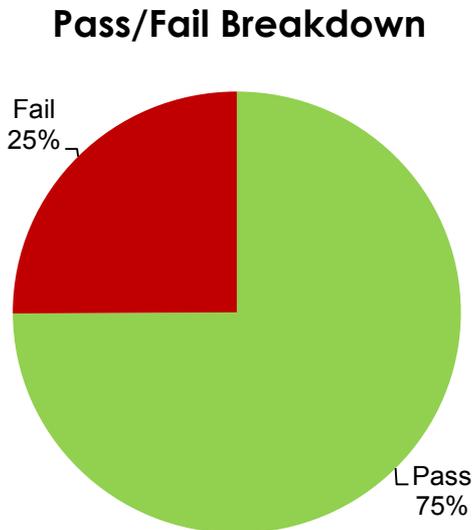
CTIA-The Wireless Association®

January 2012

Market Summary - PSMS

Interceptions Breakdown

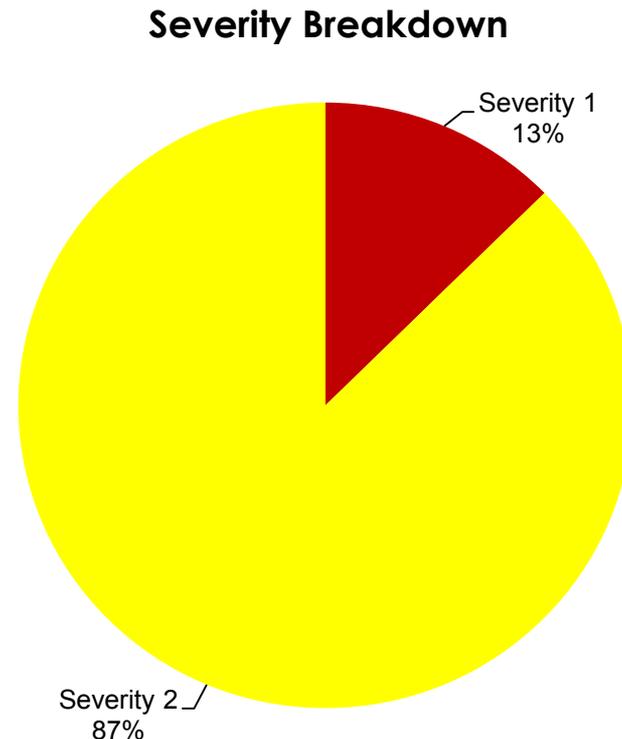
- Total interceptions: 4,577
- Passed: 3,429
- Failed: 1,148
- Failed at Severity 1: 145



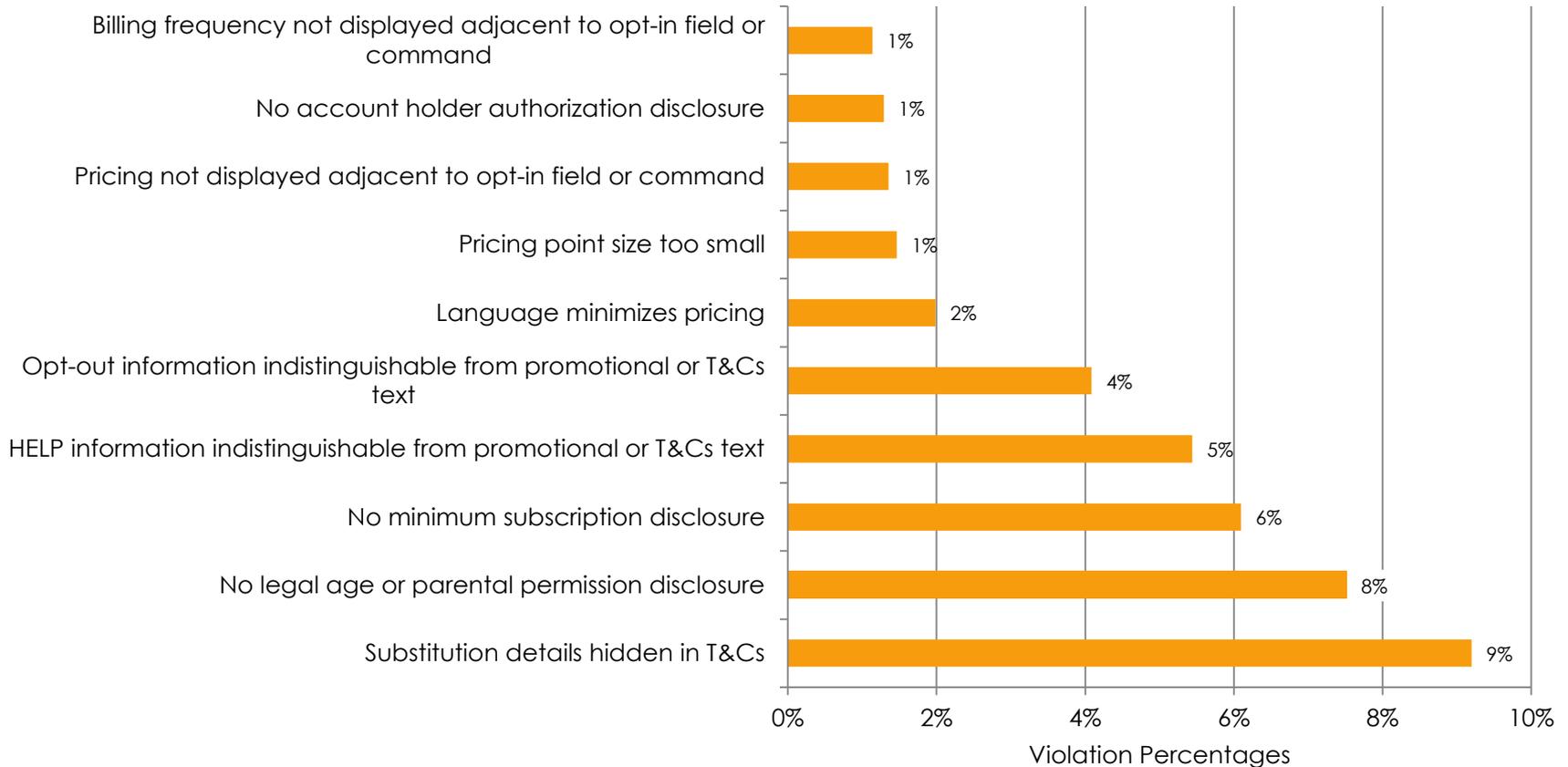
Overall Failures by Severity - PSMS

Findings

- **Severity 0: 0**
No Severity 0 violations for PSMS were reported in January 2012
- **Severity 1: 145**
“No account holder authorization disclosure,” with 59 occurrences, was the most common Severity 1 violation
- **Severity 2: 1,003**
“Substitution details hidden in T&Cs,” with 421 occurrences, was the most common violation, accounting for 19% of total violations



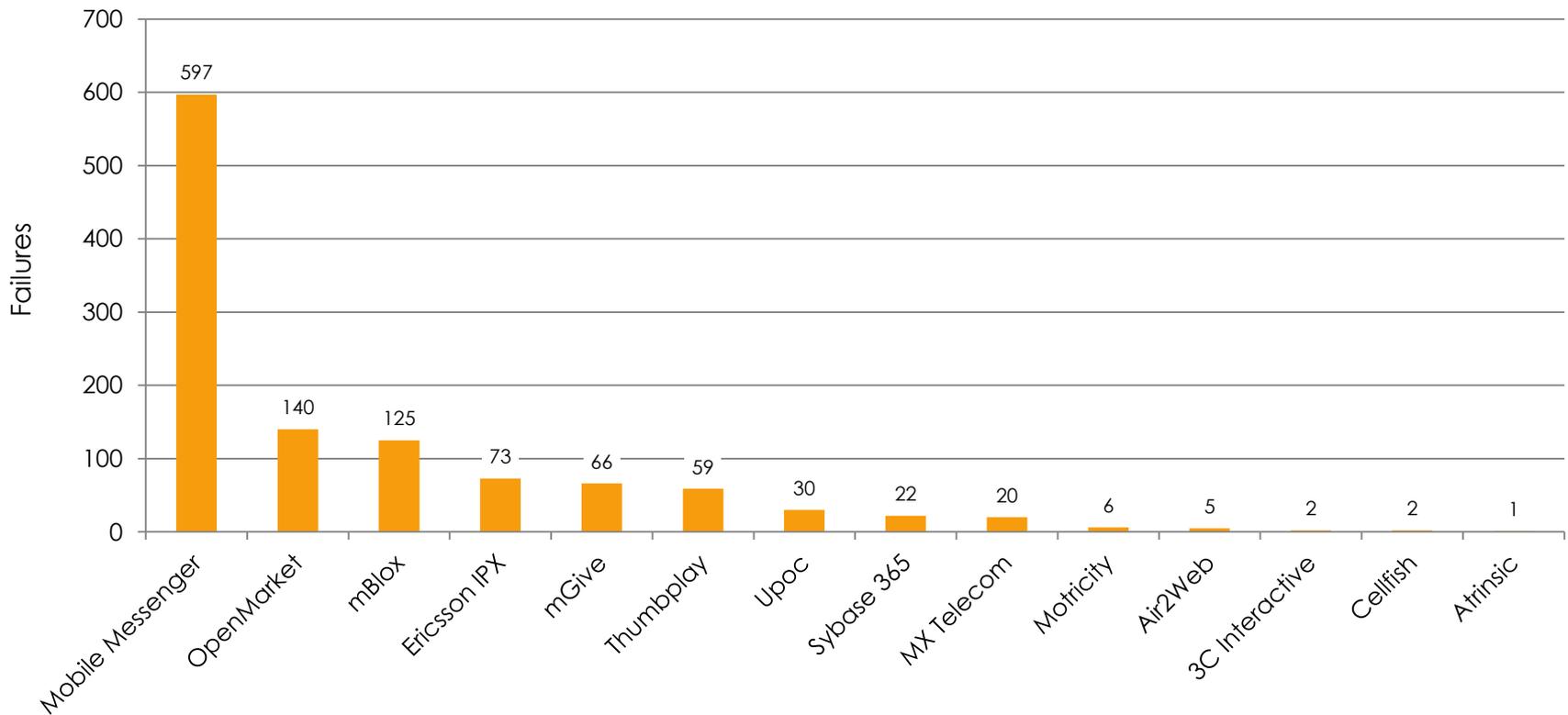
Violations Occurrence - PSMS



*Graph depicts top 10 violations and percentage of PSMS ads affected by them

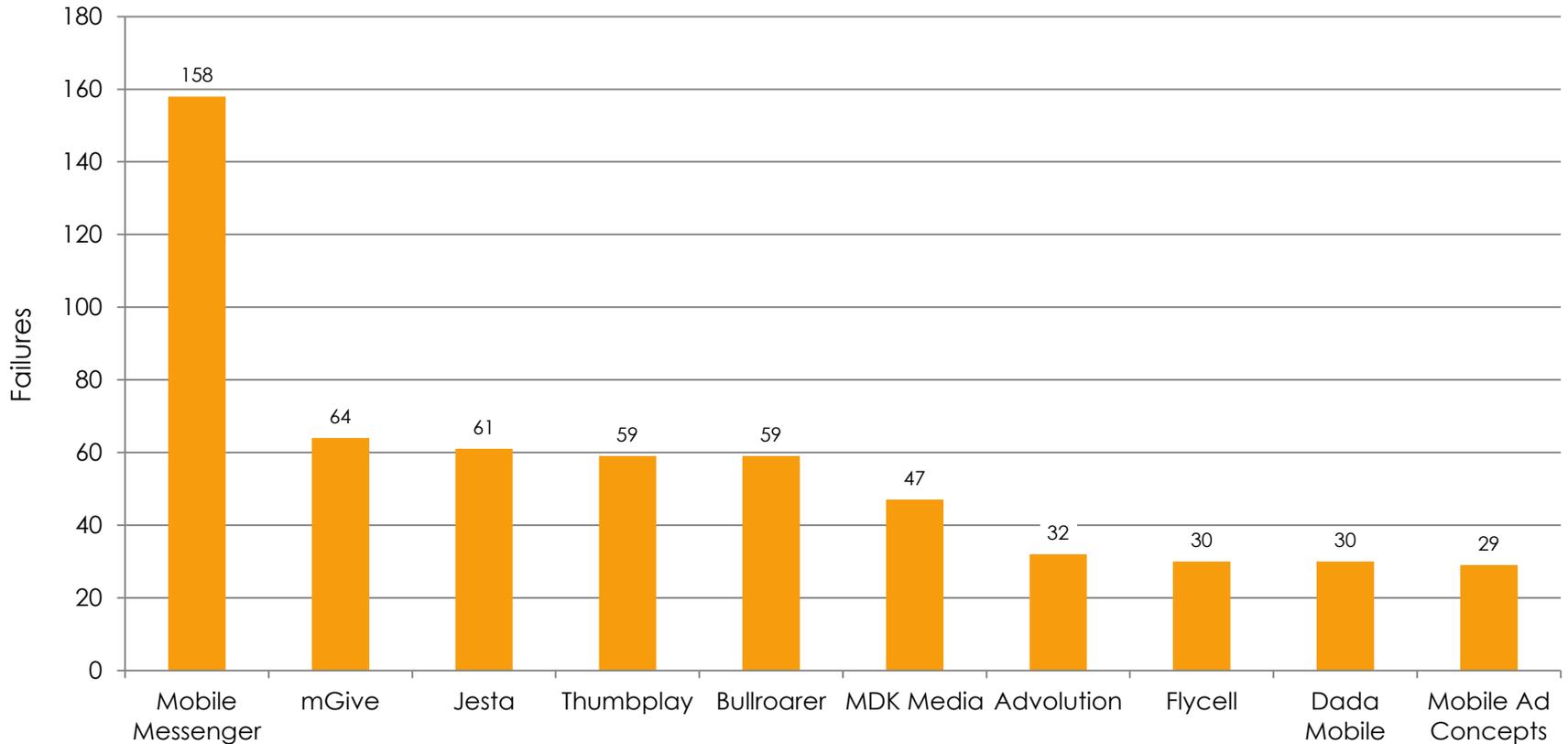
The top violation “substitution details hidden in T&Cs” affected 9% of all premium advertisements, driving the overall failure rate

Failures by Aggregator - PSMS



- Mobile Messenger hosted the most compliance issues this month, accounting for 52% of total premium advertising failures
- Atrinsic accounted for the fewest, with one failure

Failures by Content Provider - PSMS



*Graph depicts top content providers accounting for most PSMS failures

Mobile Messenger had the most failures in January, with 158, and it accounted for 14% of total premium advertising failures

Month End Report



CTIA - The Wireless Association®

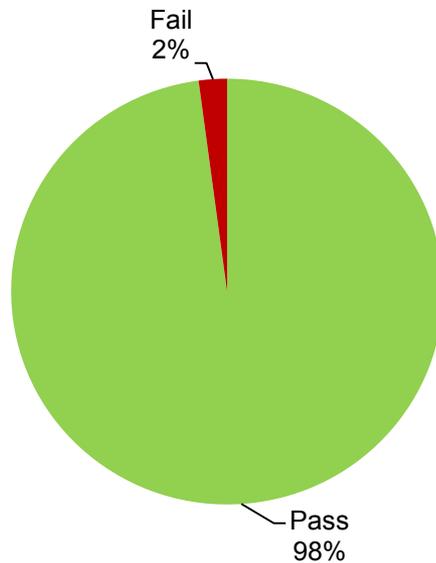
December 2012

Market Summary - PSMS

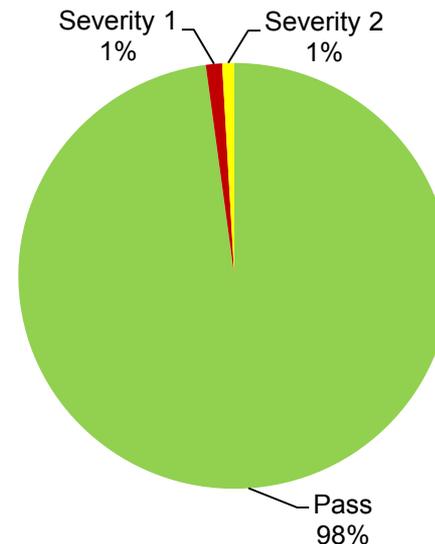
Interceptions Breakdown

- Total interceptions: 2,887
- Passed: 2,826
- Failed: 61
- Failed at Severity 1: 35

Pass/Fail Breakdown



Severity Breakdown

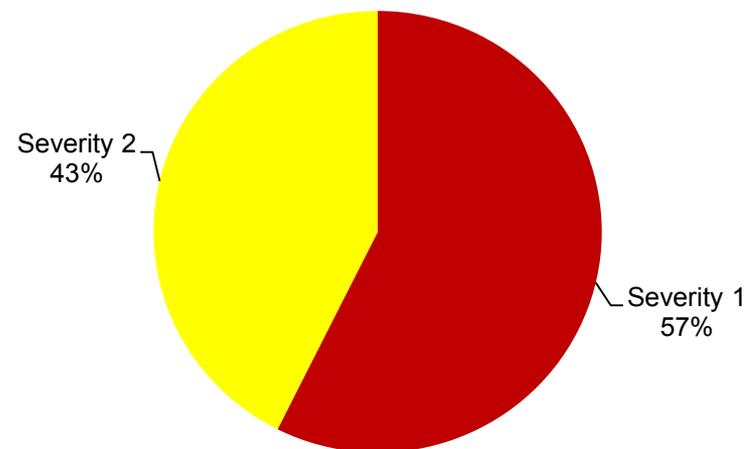


Overall Failures by Severity - PSMS

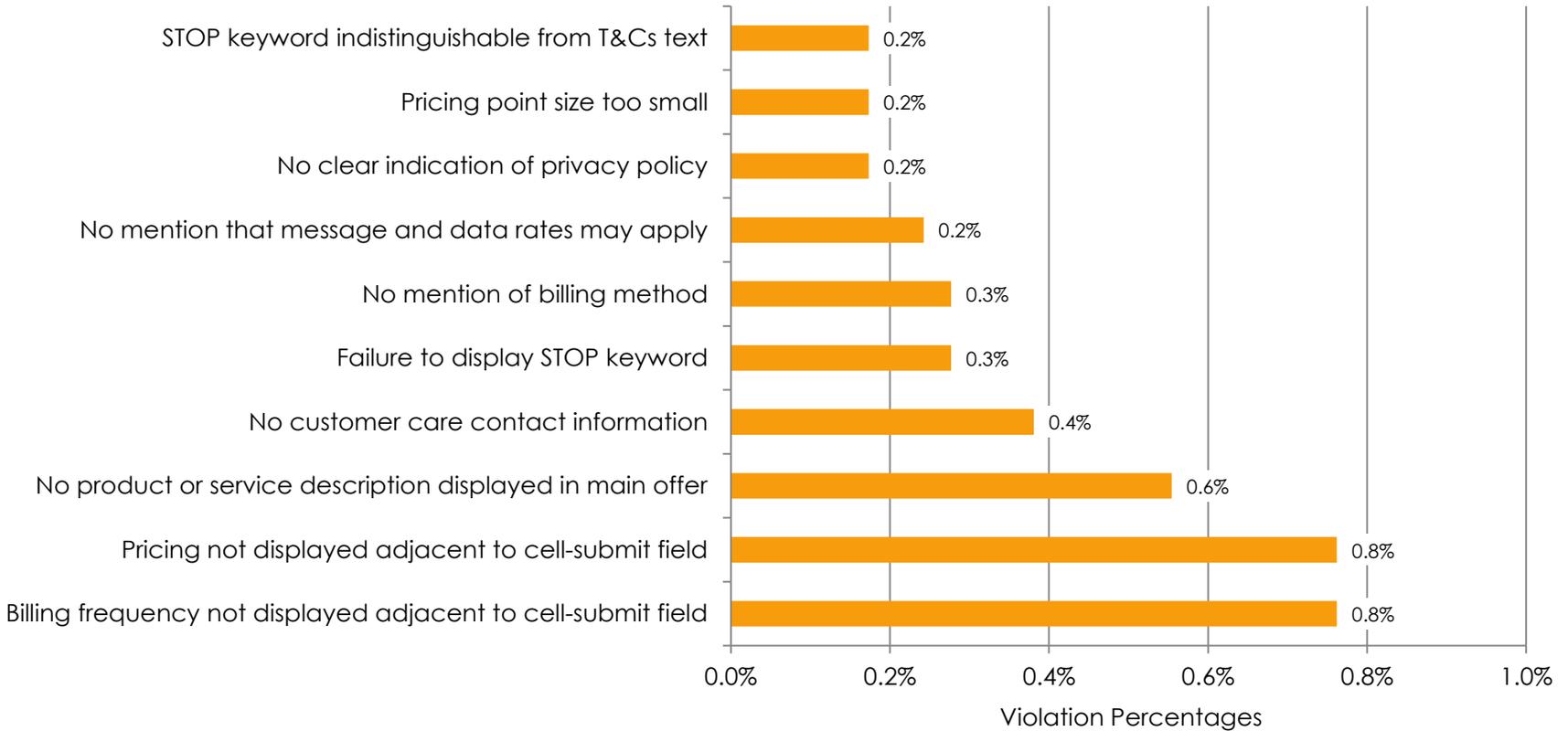
Findings

- **Severity 0: 0**
No Severity 0 violations were reported in December 2012
- **Severity 1: 35**
“No product or service description displayed in main offer,” with 16 occurrences, was the most common Severity 1 violation, accounting for 12% of total violations
- **Severity 2: 26**
“Pricing not displayed adjacent to cell-submit field” and “billing frequency not displayed adjacent to cell-submit field,” with 22 occurrences each, were the most common Severity 2 violations

Severity Breakdown



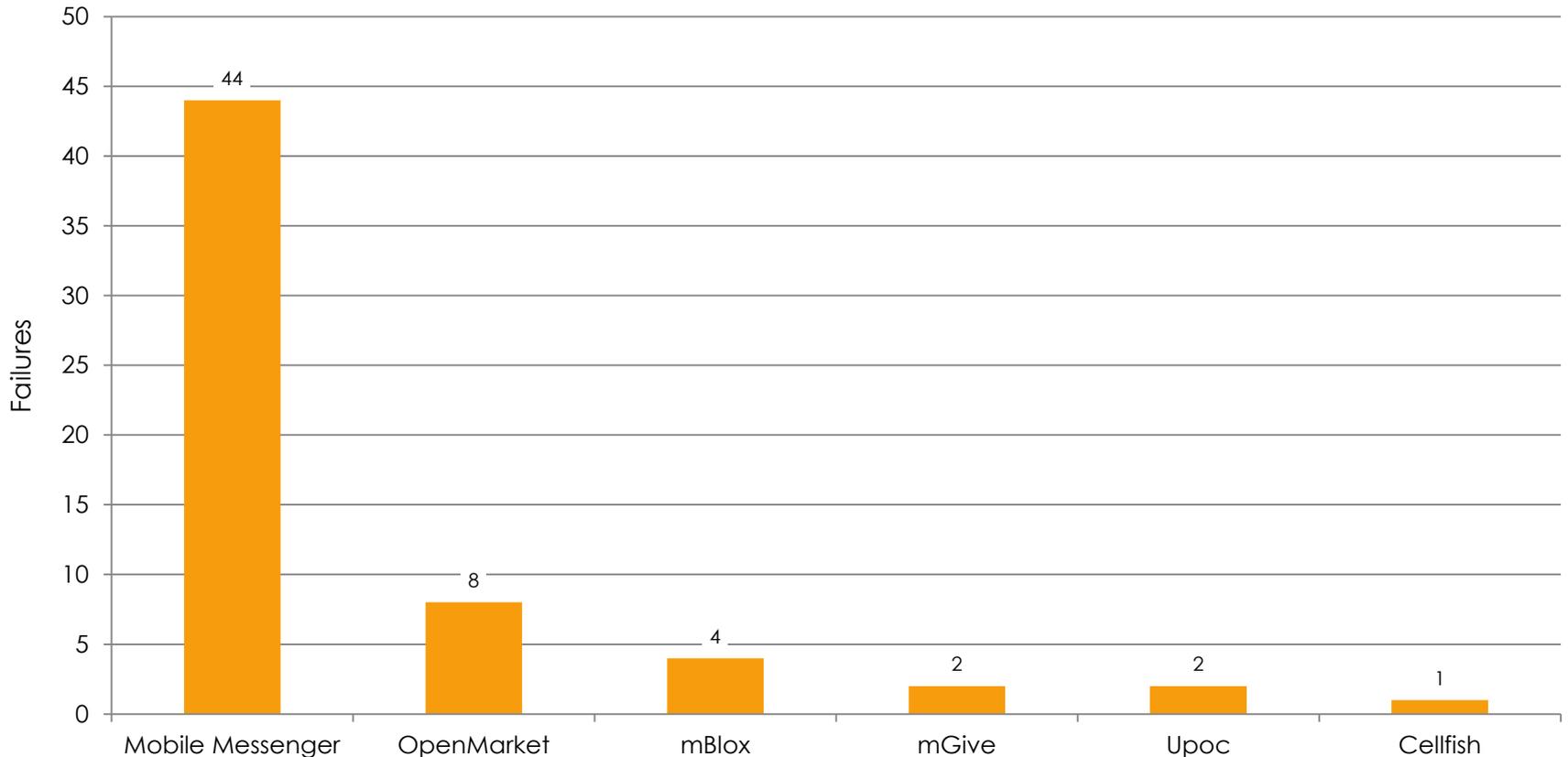
Violations Occurrence - PSMS



*Graph depicts top violations and percentage of PSMS advertisements affected by them

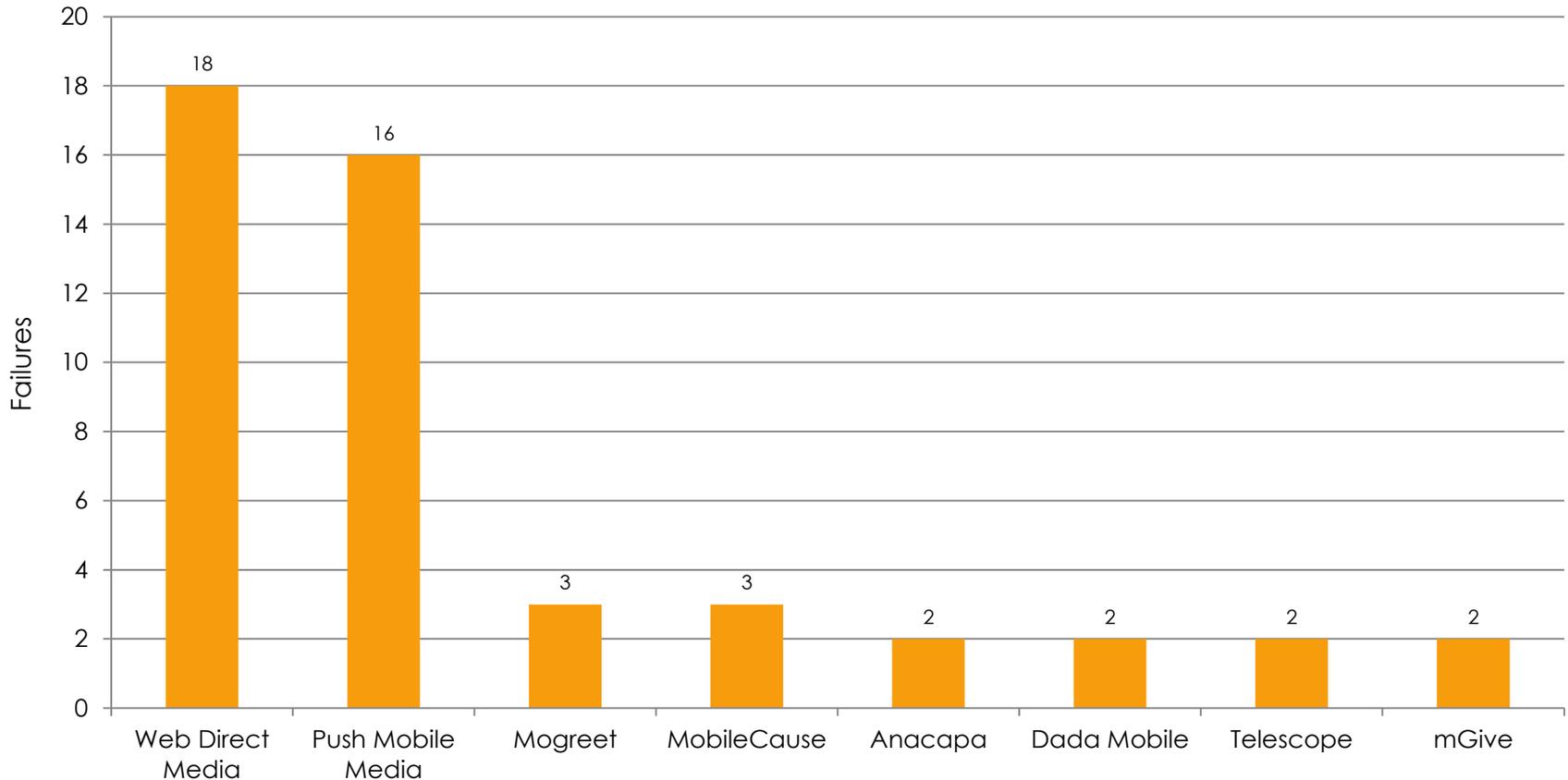
The top violations “pricing not displayed adjacent to cell-submit field” and “billing frequency not displayed adjacent to cell-submit field,” each affected 0.8% of all premium advertisements

Failures by Aggregator - PSMS



- Mobile Messenger hosted the most compliance issues this month, accounting for 72% of total premium advertising failures
- Cellfish accounted for the fewest, with one failure

Failures by Content Provider - PSMS



*Graph depicts top content providers accounting for most PSMS failures

Web Direct Media hosted 18 failures in December, accounting for 30% of total premium advertising failures

Exhibit

B

From: [REDACTED]
To: [REDACTED]
Sent: 10/16/2013 7:11:40 PM
Subject: RE: Termination Notice for CP Anacapa

Thanks [REDACTED]

From: [REDACTED] [mailto:[REDACTED]@mobilemessenger.com]
Sent: Wednesday, October 16, 2013 1:55 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Termination Notice for CP Anacapa

Hi [REDACTED]

I've asked for this info and will get back to you asap.

Thank you!

[REDACTED]
Director of Audits and Compliance
MOBILEMESSENGER

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
www.mobilemessenger.com

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From: [REDACTED] [mailto:[REDACTED]@att.com]
Sent: Wednesday, October 16, 2013 1:21 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Termination Notice for CP Anacapa

[REDACTED],
Can you or someone on your team please provide me with the Contact name, phone number and email address for Anacapa?

AT&T is required to report this to the CAPUC

Best,
[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@mobilemessenger.com]
Sent: Wednesday, October 16, 2013 12:44 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Termination Notice for CP Anacapa

Thanks for the detailed info [REDACTED]

From: [REDACTED] [mailto:[REDACTED]@att.com]
Sent: Wednesday, October 16, 2013 6:10 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Termination Notice for CP Anacapa

[REDACTED]

This is a situation where there is series of past issues that predicated this termination.

In November of 2012 we, and [REDACTED] specifically, reviewed their request for PSMS onboarding to AT&T's network. Anacapa did not pass our internal vetting process after the phone interview, and we rejected them from running PSMS campaigns. As such [REDACTED] rejected campaigns on SC's 54480 and 65815, but failed to reject the campaign on SC 97841 which got certified and turned LIVE.

This SC has already been suspended twice for high refunds. In January for 23% and May for 15.45%. They have had escalated complaints from customer care, and in fact we had drafted a termination notice back in May, which I failed to deliver. In reviewing our PSMS campaigns we found Anacapa had received 20 Sev 1 audit failures since 10/23/2012, including 2 severity 1's on SC 97841 in December 2012, which coincides with the ramp up of this SC. On June 18 Anacapa was cited for incentive / stacked marketing on SC 65815.

Based on this history, the termination of this SC and Anacapa as a CP stands.

[REDACTED]
Lead Marketing Manager- Mobile Commerce
AT&T Mobility
[REDACTED]

AT&T Proprietary (Internal Use Only)
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under written agreement

From: [REDACTED] [mailto:[REDACTED]@mobilemessenger.com]
Sent: Tuesday, October 15, 2013 4:38 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Termination Notice for CP Anacapa
Importance: High

Hello [REDACTED]

Can you provide the details of the audit on this code? This short code has not received a CTIA since December 2012, and has not acquired new subscriptions in several months. Also, the refund rate is well under the threshold.

I hope we can figure this out before the code is completed.

Thanks!

[REDACTED]
Senior Director of Compliance and Customer Care

MOBILEMESSENGER

From: [REDACTED] [mailto:[REDACTED]@att.com]
Sent: Tuesday, October 15, 2013 12:14 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Termination Notice for CP Anacapa

Mobile Messenger,

This is to advise that we will terminate Short Code 97841 and the CP Anacapa. As a general matter, the activity of this Short Code and CP does not comport with our requirements for use of our network and access to our customers due excessive CTIA Sev 1 audit failures.

AT&T will complete Short Code 97841 by changing its status to COMPLETE in CMS immediately. This action will conclude all subscribers on their renewal date. We will review the traffic on this code. If we see that there is no content being delivered we will go back and refund the entire subscriber base on this Short Code.

Regards,

[REDACTED]

[REDACTED] | WMC Global | AT&T Senior Account Manager
[REDACTED]
[REDACTED]

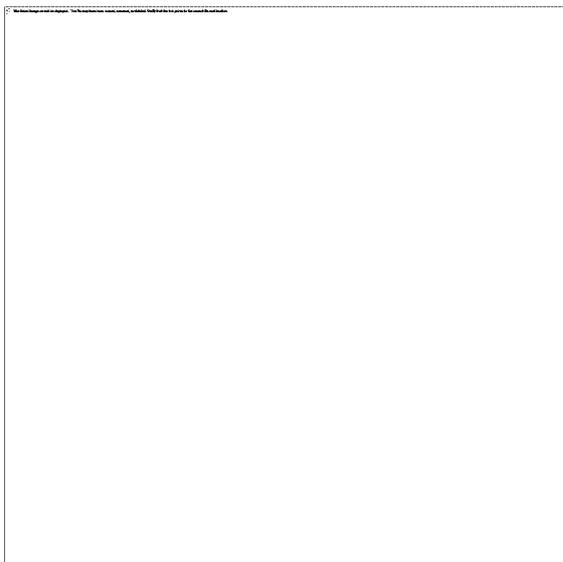
<http://www.wmcglobal.com>

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Exhibit

C

From: compliance&analytics
To: Duncan@mundomedia.com; jasonb@mundomedia.com;
angelo@mundomedia.com; jason@mundomedia.com;
araxie@mundomedia.com
CC: Jacob Leveton; Erdolo Eromo; Fraser Thompson
Sent: 7/5/2011 7:41:47 PM
Subject: Notice: T-Mobile Refund Ratio Exceeded
Attachments: logo240x123.png



Dear Neolmage,

This alert is to notify you that the refund ratio for short codes listed below exceeded T-Mobile's 15% threshold for the month of June 2011. As such T-Mobile will now charge \$10 for each refund/Customer Care Call in June 2011.

ShortCode	June Refund	June Revenue	June Refund Ratio
63746	\$55,973.97	\$110,849.04	50.50%
41933	\$67,592.34	\$154,595.25	43.72%
91097	\$51,098.85	\$133,086.78	38.40%
86358	\$92,307.60	\$255,444.30	36.14%
33999	\$57,452.49	\$222,966.81	25.77%
46965	\$86,803.11	\$376,353.27	23.06%
62131	\$14,915.07	\$75,784.14	19.68%
40684	\$5,514.48	\$32,627.34	16.90%
70438	\$3,576.42	\$21,987.99	16.27%

53405	\$679.32	\$4,185.81	16.23%
25692	\$21,338.64	\$137,712.15	15.50%

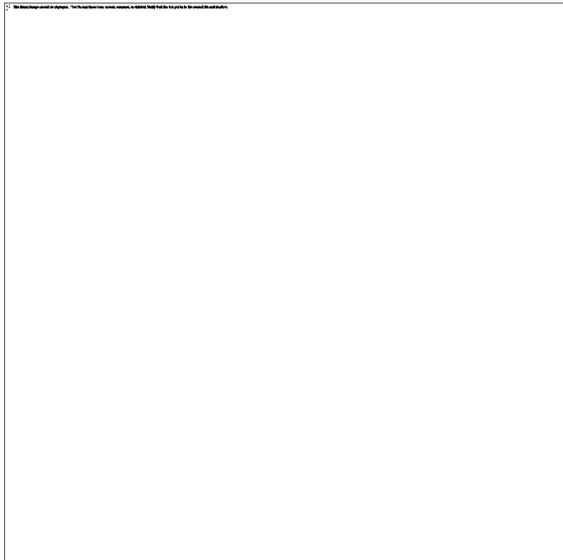
If you have any questions please do not hesitate in contacting your account manager.

Thank you,
Mobile Messenger Compliance Team

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From: Chris Goff
To: Jason Brenzel; 'Jeannie Cuacos'
Sent: 10/9/2012 10:10:34 PM
Subject: FW: Notice: AT&T Refund Ratio Exceeded
Attachments: logo240x123.png



Dear Neolmage,

This notice is to alert you that Refund Rate of the short codes listed below is over AT&T's established 18% Refund Rate Threshold.

Short Code	September Refund	September Revenue	September Refund Rate
30900	\$124,759	\$219,580	56.8%
91097	\$2,478	\$4,755	52.1%
89147	\$100,949	\$321,109	31.4%
56255	\$31,238	\$103,367	30.2%
33999	\$28,953	\$112,458	25.7%
59025	\$131,150	\$522,357	25.1%
57808	\$31,014	\$127,363	24.4%
60638	\$42,327	\$181,668	23.3%
63837	\$49,410	\$214,785	23.0%
38868	\$19,560	\$85,924	22.8%
69097	\$32,641	\$178,182	18.3%

In accordance with AT&T's Refund Rate policy, all live campaigns for this short code will be sent to AT&T's audit team for Priority Audit.

If you have any further questions or queries about the information contained in this notice or would like further advice or information of the impact of these changes please do not hesitate in contacting your account manager.

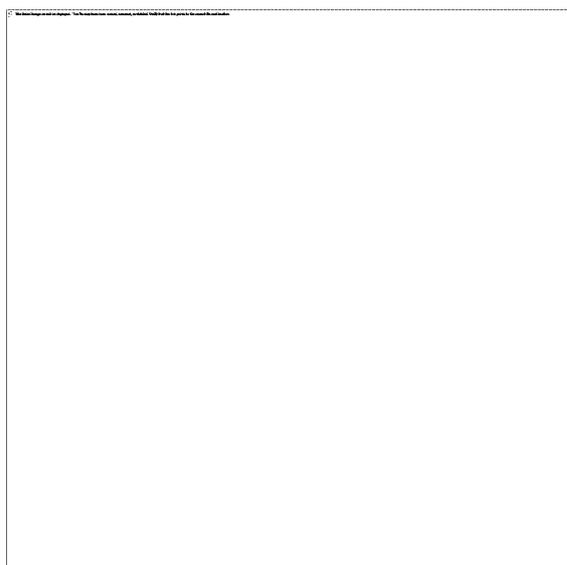
Thank you,

Mobile Messenger Team

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From: compliance&analytics
To: Duncan@mundomedia.com; jasonb@mundomedia.com;
angelo@mundomedia.com; jason@mundomedia.com;
araxie@mundomedia.com
CC: Jacob Leveton; Erdolo Eromo; Fraser Thompson
Sent: 10/4/2011 1:08:38 AM
Subject: Notice: Sprint Refund Ratio Exceeded
Attachments: logo240x123.png



Dear Neolmage,

This letter is to inform you that the short codes below have exceeded Sprint's refund rate policy.

As a result, the following table displays the penalties for exceeding Sprint's refund rates.

- **0% - 7%:** refund rate over 3 month average: applicable for incentives/bonus and normal payout
- **7.01% - 12%:** no incentives & no penalties, normal payout
- **12.01% - 17%:** 10% PENALTY ON THE AVERAGE MONTHLY RETAIL REVENUE IS FOR THE 3 MONTH PERIOD
- **Greater than 17.01%:** 25% PENALTY ON THE AVERAGE MONTHLY RETAIL REVENUE IS FOR THE 3 MONTH PERIOD & RISK OF CODE TERMINATION

Short Code	June 2011 -- August 2011 Revenue	July 2011 -- September 2011 Refund	Refund Ratio
63453	\$328,770.90	\$94,643.40	28.79%
30900	\$7,052.94	\$1,938.06	27.48%

53405	\$7,122.87	\$1,758.24	24.68%
83574	\$19,860.12	\$4,706.16	23.70%
29937	\$1,498,430.07	\$352,950.29	23.55%
85820	\$21,218.76	\$3,514.68	16.56%
63746	\$808,820.37	\$133,870.65	16.55%
56255	\$159,859.98	\$19,412.57	12.14%

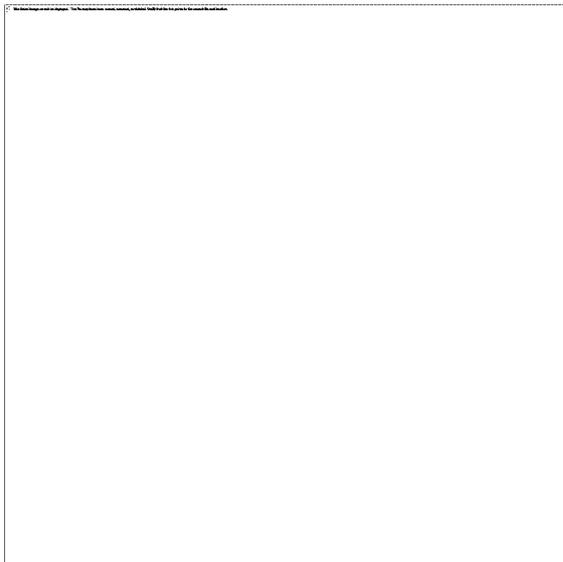
Thank you,

Mobile Messenger Team

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From: compliance&analytics
To: Duncan@mundomedia.com; jasonb@mundomedia.com;
angelo@mundomedia.com; jason@mundomedia.com;
araxie@mundomedia.com
CC: Jacob Leveton; Erdolo Eromo; Fraser Thompson
Sent: 6/7/2011 7:35:27 PM
Subject: Notice: Verizon Refund Ratio Exceeded - May 2011
Attachments: logo240x123.png



Dear Neolmage,

This notice is to alert you that the refund rate of the short codes listed below is over Verizon's expected 5% refund rate.

ShortCode	May Refund	May Revenue	May Refund Rate
69742	\$65,254.68	\$293,486.22	22.23%
56255	\$66,063.87	\$410,808.78	16.08%
88922	\$55,804.14	\$384,265.35	14.52%
85820	\$46,783.17	\$504,634.86	9.27%
33999	\$52,827.12	\$645,374.97	8.19%
69097	\$55,184.76	\$832,916.25	6.63%

If you have any further questions or queries about the information contained in this notice or would like further advice or information of the impact of these changes please do not hesitate in contacting your account manager.

Thank you,
Mobile Messenger Team

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