

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
IP-Enabled Services)	WC Docket No. 04-36

**COMMENTS OF THE
UTILITY CONSUMERS' ACTION NETWORK**

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SUMMARY

Consumer is a generic term representing every individual in the country. As such, consumer technological sophistication varies from highly adept to those whom adopt technology only out of necessity. Regardless of this variation nearly all consumers are users of some form of telecommunications services such as Commercial Mobile Radio Service (CMRS). As technological advances allow for multiple services to be offered through one device, and as service providers increase their offerings, consumers are often left in the dark as to the costs of these additional services. Modern wireless bills are riddled with billing errors and unauthorized charges, and consumers bear the costs in lost time and money.

Transparent and accurate consumer information simultaneously 1) improves market competitiveness 2) provides consumers a basic level of self-protection, and 3) encourages adoption of new technologies. Accurate and detailed information in the mobile wireless context includes clarity regarding services and the requisite contractual relationship, clear billing and best practice standards to help prevent cramming, and improved complaint processes to help consumers resolve disputes with service providers.

ARGUMENT

I. CHOOSING A PROVIDER AND A PLAN

a. SOURCE OF INFORMATION

Consumers not only have to choose a provider, a plan, and a device, they also have to choose whether to make those purchases from the provider or an authorized dealer. Authorized dealers offer consumers better price deals on devices, but at the cost of additional contracts

which effectively void any trial period for the service and often result in additional early termination fees or liquidated damages that the consumers were unaware would be incurred. UCAN has worked directly with consumers who have been penalized for making changes to their rate plan, service address, or other minor adjustments.¹ It is often very difficult for consumers to distinguish between authorized dealers and provider stores due to approved use of the provider's name, trademark, and logos, and often the failure of the authorized dealer to clearly advertise its own name or explain its association with service providers.

When first purchasing a device and a plan, consumers are often fooled into believing they are dealing with a mobile service provider's employees or representatives. Later on, when issues arise, providers are quick to distance themselves from authorized dealers, characterizing these relationships as separate and involving separate contracts. However, it is this agency relationship between the providers and the authorized dealers that creates situations where a customer may no longer test his or her service for a trial period because the contract from the authorized dealer prevents cancellation within the first 180 days. The authorized dealer will explain that they initiate such provisions because if the customer cancels their contract within those first 180 days, the authorized dealer loses or has their commission greatly reduced. The beneficiary of this dual layered contract, then, is the provider, who advertises trial periods and service offerings that are voided or contradicted by authorized dealers.

Stores, whether corporate or an authorized dealer, are still the best place for a consumer to test devices. However, they are rarely helpful to consumers in understanding the terms and conditions of service, providing comparison to other service providers, and explaining the

¹ Typical language includes a \$100 per line charge for lowering a pricing plan with the first 120 days after activation and \$200 per line liquidated damages for disruption of the phone agreement which includes nonpayment of phone usage billing, failure to immediately replace and reactivate any loss or theft of a cellular telephone, transferring the service into someone else's name or relocating to another city.

various terms, charges and fees associated with telecommunications services. Indeed, the very design of these stores is such that consumers rarely have anywhere to sit, let alone spend time reviewing terms and conditions. Some consumers are able to use the Internet to research and compare prices and services. Provider websites in contrast are typically a dedicated source of plan details and service offerings. A recent New York Times article suggested to consumers that the best method to shop for CMRS devices (particularly smart phones), service quality and, service is to do engage in a combination on online research, store browsing, and online purchasing.² Shopping for telecommunications services has become a process akin to purchasing a house or a vehicle requiring time, research, and likely a few test drives of devices. However, for all the focus initially placed on devices, it is in choosing services where consumers often have the most difficulty, and this is due to a lack of information.

b. CONTRACTING FOR SERVICES

When shopping for telecommunications consumers are typically aware of the basic services that they are contracting for: a device, a monthly or prepaid rate which allows customers to use certain services for a defined amount of use, and any number of state and federal taxes which they know they will have to pay. However, where consumers often run into difficulty is with inclusion of ancillary services, fees, and other charges of which they are unaware. Many times consumers were required to accept these ancillary services and fees as part of the bundled services that are part of one telecommunication service plan. A particular consumer, for instance, may be intending to purchase voice services through a CMRS provider, and receive, with little or no knowledge and explanation, SMS messaging service, MMS messaging service, and data services. It is not until a consumer incurs an expense for these services that they discover their

² Bob Tedeschi. Phone Smart: In Choosing a New Phone, Online Research Goes Only So Far. October 7, 2009. New York Times. <http://www.nytimes.com/2009/10/08/technology/personaltech/08smart.html>

availability and specific rates. On those occasions, costs can range from a few cents to thousands of dollars depending upon the circumstances.³

It is not until consumers incur such costs that they learn about options to block certain features, or learn how to use what are often previously unknown services. In the case of data services, it is sometimes a matter of expensive trial and error before a consumer learns that certain actions undertaken with the device results in data charges. These additional services are considered features, similar to how a sun roof or a satellite radio system might be considered a feature on a car, but rather than be promoted upfront and supplied at an additional costs, these services are automatically available and it is only after use, whether intentional or not, that the true cost for these services emerge.

When they enter into a contract, consumers need to be informed of all the services being provided and the potential costs for these services. Consumers also need to be made aware of the ability to block or disable features. As devices have become capable of doing more, consumers have incurred costs for services that they may never have intended to use. If a consumer is made aware of these services, and of their option to enable or disable them, the consumer is more likely to gather information regarding these services and make informed decisions about how best to utilize the services the provider is making available.

This point is especially true for services provided through CMRS providers. CMRS providers stand in the unique position of being the conduit through which various services are provided, as well as the biller for those services. Due to their multifaceted role, CMRS providers are going to receive the most consumer inquiries and complaints. The providers also have

³ UCAN has received consumer complaints ranging from a few pennies incurred by a consumer accidentally using data services, a feature that they did not know to be available, to a complaint for fraudulent charges in excess of \$20,000 for international roaming charges, where the consumer had not previously used and did not know International Roaming was even an available service.

various motivations with regard to these services, which include benefits to both directly (financially) and indirectly (consumer preference for a provider based on services they can provide) from providing the services. It is essential to a competitive and fair market, and in many ways to a provider's long term benefit, to ensure that consumers purchasing devices and services are fully informed of the capabilities, services, and fees involved in their plan. This not only protects the consumer, but allows providers to reduce the time and staffing needs that result from lack of transparency and access to information.

II. MANAGING USE OF THOSE SERVICES

The contract between consumers and service providers is unique. It is unique because of the great disparagement between the bargaining powers of the parties. The contracts are drafted entirely by the carriers and presented as an afterthought to customers during the purchasing process on a take it or leave it basis. The typical contract contains clauses that allow for the service provider to change the terms of the contract at any time and make no guarantee that the provider will actually continue to provide service in the areas it currently provides it. Consumers, on the other hand, have no rights to change the terms and cannot terminate service without incurring a termination penalty. The one exception to the termination penalty is a clause that these contracts typically contain, the materially adverse clause which, on its face, allows consumers to terminate their contract without termination if the company makes a material change to their terms of service. Unfortunately, these clauses are not consistently defined and consumers are normally met with heavy resistance from service providers while attempting to invoke this clause. Service provider have resisted termination for customers even when they have initiated a new fee for service that the consumer does not agree to pay, as well as when service

providers change their service area and no longer provide services to critical areas consumers use the service, such as their homes.

These contractual difficulties are typically minor compared to the difficulties consumers face in reading their bills. Of course difficulty in reading the bill assumes consumers are actually receiving a detailed bill. In order to save costs some service providers send to consumers what is typically called a Summary Bill or Streamline Bill. Consumers may only receive a Detailed Bill by paying an additional monthly charge.⁴ Service providers often justify this practice by making bills available online. However, unless a consumer is purchasing Internet access services from the service provider, there is no guarantee the consumer has Internet access. In some instances the consumer may simply prefer not to set up an online account to view their monthly charges. Though UCAN often encourages individuals to adopt new technologies and new methods of receiving of information, the readily available, detailed monthly bill is of vital importance. Consumers who want to avoid a few extra dollars in fees can end up without any information regarding the charges on their bills.

a. BILLING FORMAT AND INFORMATION

The difference between a paperless bill and a paper bill are not just cost. Consumers who utilize online accounts often have the advantage of tracking and analyzing their various services and usage in much greater depth. Such information, when provided in a clear manner and easily accessible, allows consumers to determine whether they are on the proper plan and make informed decisions concerning whether to change plans or providers. Some providers will even

⁴ The Commission has recognized that the Detailed Bill is a line itemed charge on most wireless telephone service bills. <http://www.fcc.gov/cgb/consumerfacts/understanding.html>. The four largest CMRS carriers charge for detailed billing. See: <http://support.t-mobile.com/doc/tm23555.xml>; <http://www.wireless.att.com/cell-phone-service/services/serviceDetails.jsp?LOGSID=&skuId=sku990027&catId=cat1470007>; http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml#_highlight&id16=detailed+paper+bill; http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp.

list the end of term date for the consumer's contract online. This information is not typically available on a paper bill. The paper bill, assuming a detailed bill is even received, also contains a myriad of acronyms for the various types of services being received.

A CMRS provider bill, then, might include call details for plan minutes, nights and weekends minutes, roaming minutes, as well as text use and data use in a bill. Data information may be listed in kilobytes, megabytes, or gigabytes. However, the average consumer may not be able to use this data information effectively no matter how it is conveyed. A consumer may have difficulty calculating the amount of Mb/s used when opening a webpage versus the amount used when streaming radio online, or using video services. Accurate, readily available usage information can mean a significant difference in incurred charges.

The consumer is then, depending upon the services, left to figure out various taxes, fees, and surcharges, some of which are mandatory, some of which governmental agencies allow service providers to pass through to consumers, and some of which the provider has decided to charge. A consumer is often at a loss as to whether it will incur these charges regardless of the provider or if the charges are unique to a specific provider because of small variations in language used to bill the taxes, fees, and surcharges. The various amounts for these taxes, fees, and surcharges are typically unknown to the consumer before receiving their first monthly statement and then may vary by a few cents in the following months creating confusion as to how the charge is being calculated and whether the appropriate amount is being charged. Consumer bills in any format often lack the relevant fee calculation information for consumers to be able to determine they are being charged properly.

Consumer confusion could likely be decreased through the adoption of uniform language for at least federal regulatory fees, whether they are taxes or federally allowed charges. This

would add some clarity to consumers' bills. Additionally, service providers should make available information concerning the purpose of the various charges to be assessed to consumers prior to signing up for services, so that the consumer may make an informed decision as to the total cost of the plan, including fees and surcharges imposed unilaterally by the service provider.

b. CRAMMING

Cramming continues to be a problem for consumers. Cramming occurs because consumers are not fully informed about available services and their ability in some cases to block such services, bills are often unclear and confusing, and service providers continue to charge for incoming usage and act as billing agents for third parties. Cramming will likely always exist because of the possibility of billing errors and deceitful third parties, but there are many steps service providers may take to reduce cramming and address and correct crammed charges when they occur.

Examples of cramming fall into various categories, the following list should be considered illustrative but not complete. One category of cramming is Third-party Data/Services cramming which are unauthorized data and service charges by companies other than a consumer's designated provider. The charges relate to items such as unauthorized text messages, ringtone subscriptions, multimedia services, unlisted charges by billing aggregators, and others. The services are confusing, extremely difficult to cancel, and regularly marketed to minors. A second category is carrier data service cramming, which is similar to third-party cramming, except the unauthorized charges are added to bills by the service provider. A third category of cramming is international roaming is where travelers have phones programmed to auto-check for email and services if turned on when consumers are unaware that the service is running without required action on their part. A fourth category includes charges for calls not placed, which may

be the result of billing error, a form of hacking or fraud, or otherwise. Here the consumer denies placing the calls, has no history or knowledge of anyone at the numbers or locations dialed, but was never lost possession of their phone.⁵

Some of these charges are easily detected when a new monthly fee or charges for an amount of money significantly above the monthly charge are incurred. Many times, however, these charges are for smaller amounts of money or only reduce a consumer's available usage, and may go undetected without the consumer closely reviewing a detailed copy of their bill.

Providers are unlikely to be able to prevent all forms of cramming, but could take proactive steps to lessen the occurrence of cramming by working to ensure the validity of the organizations they allow to pass through charges on their bills. Providers may also set up opt out alerts that inform consumers of when a particular action will incur a charge, such as opening a web browser or using certain phone features for the first time. Providers could also adopt a more proactive approach to resolving cramming complaints with consumers. Unfortunately, it is the practice of many providers, even in the face of substantial evidence to the contrary, to assume that a disputed charge is legitimate and only after significant effort on the part of the consumer to actually investigate the legitimacy of a charge. These practices are despite some state laws and regulations that require an investigation.⁶ Even when they do conduct an investigation, service providers are unlikely to investigate whether a particular crammed charge is unique to an individual consumer, or if it is likely occurring systematically to a number of their customers. Service providers take a one and done attitude towards customer service, many times fixing a single customer's bill but letting the cramming persist absent litigation, or at least the imminent threat of litigation.

⁵ Cramming can also be unauthorized charges placed on a stolen or lost phone.

⁶ For example California Public Utilities Code Section 2890 and California Public Utilities Commission General Order 168.

Government agencies with regulatory authority over service providers such as the Commission could help to reduce cramming by investigating informal complaints lodged by consumers, particularly if different consumers appear to be lodging complaints about the same practices or organizations. Even reviewing this data on an annual basis would likely help reduce the occurrence of cramming because if providers were more likely to be investigated for cramming they cause or allow, it will become an economic incentive for them to take more steps to prevent cramming and resolve consumers disputes as they arise. The government should make any such complaint reviews and trend data, as well as any resulting actions taken by the Commission, available and open to the public for review.

III. RESOLVING DISPUTES

Consumers are likely to first raise disputes with their service providers. Service providers offer means for consumers to lodge disputes whether through a toll-free number, an email, a web chat, or other Internet service such as Twitter.

a. CUSTOMER SERVICE

Customer service through its various methods is typically available to consumers at all hours. However, the level of customer service a customer may receive will vary based upon the reason of the call and the particular customer service agent. Customers seeking information about new services are typically pleased with the customer service they receive. Consumers calling to cancel service or dispute charges are often disappointed with the hurdles and difficulties they face in resolving their issue. Customers wishing to cancel service are often transferred to a retention department rather than be cancelled by the customer service agent

taking the call. Consumers are also not always provided with information concerning porting and the proper method to retain their telephone number.⁷

Consumers who have a billing dispute often complain of increased hold times, numerous department transfers, their calls being dropped, and customer service agents who claim to be unable to help them or simply try to sell them more services. Consumers also have noted that when a dispute is not resolved in one phone call that an incomplete or in some cases no record was retained of their previous conversations and the consumer must again go through the process of explaining the dispute. Consumers who use the Internet to lodge their complaints or billing disputes fair slightly better as they cannot be placed on hold, a record is created as each party types, and agent identifiable information is made available to the consumer. A ubiquitous customer service problem is the lack of knowledge concerning state or federally mandated requirements. For instance, in California if a consumer lodges a cramming complaint the service provider is statutorily required to investigate it.⁸ However, these investigations often amount to little more than a response from the agent that the charges were proper based on the circular reasoning that the charges appear on the bill. The lack of investigation is then often explained by the consumer's initial call being categorized as a "billing inquiry" rather than a complaint. It is often up to the consumer to place numerous calls or seek third party assistance before a complaint will be investigated or customer service will have the customer call the local or regional executive office where the service provider's employees have authority to make the required billing correction. "I don't have the authority to do that" is one of the most common phrases heard from Customer Service Representatives.

⁷ For example, a common scenario is for a customer to port to a new carrier, but then find out the service does not work at the customer's home or office. If the customer then cancels the new service **before** porting the number to another carrier, the carrier will then refuse to port the phone number, even if it has been only days.

⁸ California Public Utilities Code Section 2890

b. FILING COMPLAINTS WITH THE COMMISSION AND STATE AGENCIES

There are benefits and drawbacks to consumers filing informal complaints with the Commission and state agencies who accept such complaints. The benefits include the creation of an excellent record of complaints which can be analyzed for determining improper practices and billing disputes which may be affecting more than just an individual consumer. Consumers also benefit by their complaint being sent to the executive office of the service provider, which likely has authority to resolve the dispute, rather than customer service whom likely lacks the requisite authority. The difficulty consumers face with filing complaints with the Commission or state agencies is that the complaint is often closed following the response of the service provider to the complaint, regardless of whether the service provider admits the consumers claim, denies the consumers claim, or denies the consumer claim but offers a courtesy credit.

Consumer disputes do not always contain the proper terminology to describe the alleged problem and documentation which may explain the reason for the dispute often lies with the service provider. However, a complaint to an agency is often dismissed following a service providers' claim of, for example, a charge simply being proper, without requiring the documentation or proof that a formal dispute would require. Consumers are at a disadvantage at the start of a dispute and the Commission and state agencies need to take a more active role in the investigation and review of complaints. Despite the existence of various consumer protection rules and regulations, if our agencies are not doing thorough investigations and identifying trends, then we cannot effectively enforce these laws. Though they may not be able to advocate for the consumer, a Commission employee should be able to review the complaint and require the service provider to provide documentation in addition to a denial of fault and explain

necessary corrective action when it admits error or validates the legitimacy of a consumer's complaint.

The Commission, in order to ensure consumers are aware of the FCC's complaint process, should take steps similar to those of the state of California and require service providers to place a paragraph on a consumers' bill explaining that consumers may file a complaint with the FCC and include the web address for filing complaints and the Commission's informational phone number. In including the information on the bill, consumers would be reminded every month it may file disputes with the Commission and have a readily available source containing the contact information for the Commission. The Commission should also consider including a reminder on consumers' ability to file complaints on any new consumer resource information it publishes. For example, should the Commission undertake to maintain updated coverage maps of the various service providers each map could contain a statement about the informal complaint process.

CONCLUSION

Many consumers greatly enjoy using new technologies and the latest wireless devices, and for good reason. However, a thirst for new technologies and applications mixed with a lack of basic information on services and charges provides fertile ground for consumer exploitation. This exploitation leads many potential consumers to express reservations about adopting such devices because of the associated and hidden costs of service. Thus, lack of information and transparency in provision of services has a chilling effect on adoption of new technologies. Most importantly, a lack of information leads to abuses in the marketplace that diminish competition, waste consumers' time and money, and generally thwart a functioning market. Providing 1) Improved information prior to signing up for services, 2) more transparent details of the services

contract as well as provider adherence to its terms, and 3) improved complaint and dispute resolution mechanism, would all help insure consumers may adopt and utilize the many new technologies that could help improve their daily lives. Increased information, billing clarity, and a more balanced contractual relationship would help insure consumers are aware of all aspects of the service being provided. These changes along with improved dispute resolution and Commission complaint processes would provide consumers with the necessary tools to be a stronger participant in marketplace.