PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION ON

"CRAMMING"

Before the
SUBCOMMITTEE ON INVESTIGATIONS
of the
GOVERNMENTAL AFFAIRS COMMITTEE
UNITED STATES SENATE

Washington, D.C.

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Mr. Chairman, I am Eileen Harrington, Associate Director of the Federal Trade Commission's Division of Marketing Practices in the Bureau of Consumer Protection. I am pleased to be here today to provide testimony today on the subject of cramming and the Federal Trade Commission's efforts to combat this novel consumer protection problem.[(1)]

I. Introduction and Background

A. *The FTC and its Law Enforcement Authority*

The FTC is the federal government's leading consumer protection agency. The Commission's statutory mandate is to promote the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices, and increasing consumer choice by promoting vigorous competition. The Commission fulfills this mandate by enforcing the Federal Trade Commission Act.[(2)] The Commission pursues fraudulent activity like cramming under this statutory authority through law enforcement actions in federal district courts seeking temporary and permanent injunctive relief, and, ultimately, restitution to injured consumers. Using this authority, the Commission has recently brought a number of actions against crammers. I will describe those actions in a moment. The FTC Act provides the Commission with broad law enforcement authority over virtually every sector of our economy. However, the statute creates some exceptions to the Commission's broad jurisdiction.[(3)] As discussed below, one of these is for common carriers subject to the Communications Act of 1934 (47 U.S.C. § 151 et seq.), and this exception creates some unintended complications for the Commission in its efforts against cramming. I will discuss this problem in a moment.

II. The Practice of "Cramming"

A. Background: The Telephone Billing and Collection System

"Cramming" is the practice of causing unauthorized charges for a variety of goods or services to appear on consumers' telephone bills. Cramming brings into the 1990's an age-old abusive practice: charging consumers without their authorization for services they have not purchased. It is novel only in that it uses a previously unavailable means to effect unauthorized billing -- namely, the telephone billing and collection system.

The possibility that consumers might be billed on their phone bills for anything other than transmission of telephone calls is a recent development. The telephone billing and collection system, like the rest of the telecommunications system, was devised and used exclusively by AT&T when it maintained a monopoly over telephone services in the United States. The charges handled by the telephone billing and collection system were limited to those generated through consumers' use of the telephone transmission services.

This situation began to change with the break-up of AT&T. At that point, the units of AT&T that had become the local exchange carriers ("LECs") took over responsibility for billing and collection. An important result of this change was that the telephone billing and collection system that had previously served a single vendor began serving several vendors. The LECs billed and collected on their own behalf for local telephone services, and on behalf of AT&T, Sprint, MCI, and perhaps a few others, for long distance service.

Now, some years later, increased competition in the telecommunications marketplace has brought a corresponding proliferation of innovative telephone-related products and services. These developments have radically changed the character of the telephone billing and collection system. It must now serve many vendors, not just a few, selling many products and services, not just one.

Many of these products or services, such as voice mail, are variously called "information" or "enhanced" services. While not "basic" telephone service, *i.e.*, transmission of telecommunications, these services at least are offered and used through the telephone. Other products now billed on the telephone, however, are completely unrelated to telephone service. For example, the Commission recently received a complaint about an automobile roadside service club that is billing for memberships on consumers' telephone bills. As this and many other examples show, the LECs now make their billing and collection system available to a myriad of providers of varied products and services.

The telephone billing and collection system has become a new alternative to more conventional billing and collection systems, such as credit cards and checks. This innovation may benefit consumers. As technological convergence progresses, consumers may find it increasingly convenient to be billed on their telephone bills for more and more services other than telephone carriage -- Internet, cable, and other as yet unknown services. However, recent experience shows that abuse of the newly-available access to the LEC billing and collection system is also causing consumer harm.

B. The Potential for Consumer Injury

It is not an exaggeration to say that any party capable of capturing a consumer's telephone number can cause charges for a product or service to be included on that consumer's phone bill. Any party with Automatic Number Identification (ANI), a system similar to "caller ID," can capture the phone number from which a call to the party originates. Thus, the only thing needed by scammers that have ANI is a method to induce consumers to call them. They need not induce consumers to divulge credit card or other account numbers in order to effectuate billing. Similarly, telephone numbers can be obtained without ANI or other such high-tech equipment, through purported sweepstakes that require a phone number on an entry form, or even through simply drawing numbers at random from the telephone directory. It is not possible for a telephone line subscriber -- the "owner" of the telephone line -- to block telephone number capture through ANI on calls that they themselves or others place from their phones, and it is not possible for line subscribers to prevent others from access to their telephone numbers. Thus, using a telephone number as a basis for billing of products and services is problematic, because the person placing a call or otherwise providing a telephone number may not be the line subscriber, that is, the person legally empowered to authorize charges to that number.

LEC billing for vendors has created the opportunity for abuse, and has revealed that the telephone billing and collection system has not developed the mechanisms for risk assessment and fraud prevention that characterize other billing and collection systems. The bankcard billing and collection system, for example, has a number of such mechanisms. The most obvious is that the bankcard billing and collection system uses, as a basis for billing charges, a physical card with a unique account number assigned to each individual cardholder that, unlike a telephone number, is not widely available to the public. To obtain a merchant account, and thereby receive payment by credit card, a merchant must meet the bankcard network's established financial and other criteria, which may include an on-site visit by representatives of the system to ensure that the merchant account applicant is a legitimate business, selling what it claims to sell, and providing customer service after the sale.

In addition, the bankcard billing and collection system has developed the means for early identification of merchant accounts that exceed certain minimal levels of chargebacks, thereby preventing continued use of the system by merchants that may be employing fraud and deception to make their sales. The system also has rules to prevent fraudulent access to the system through laundering of credit card charges through a merchant account by persons other than those authorized by the financial institution to use the account.

In addition, there are a number of statutory protections for consumers using bankcards and other credit cards. The Truth in Lending Act[(4)] requires prompt written acknowledgment of consumer billing complaints and investigation of billing errors by creditors, prohibits creditors from taking actions that adversely affect the consumer's credit standing until an investigation is completed, and limits a cardholder's liability for unauthorized charges to $50. These protections greatly enhance the safety and reliability of the bankcard billing and collection system, and foster consumer confidence in using it.

The unique origin and history of the telephone billing and collection system accounts for the failure of consumer safeguarding features to develop previously. Nonetheless, LECs must now attain the same level of consumer safety and reliability in serving multiple vendors achieved by other billing systems that have served multiple vendors since their inception.

C. Lessons from Our Experience with Pay-Per-Call Technology

The Commission's appreciation of the potential for both benefit and injury that may result from the new use of the monthly telephone bill as an alternative billing and collection system dates from its experience in the 1980's with pay-per-call (900-number) technology. The advent of pay-per-call marked the beginning of the use of the telephone billing and collection system as a means for consumers to pay for products or services other than telephone transmissions -- namely, audio information or entertainment programs. Moreover, the introduction of this technology meant that for the first time a consumer could make a purchase of these products or services *merely by dialing a telephone number*. No exchange of paperwork, and not even the oral communication of a credit card account number, was required to complete a transaction. With pay-per-call technology, anyone with a telephone -- and nearly every U.S. household now has a telephone -- was suddenly able to make an instantaneous purchase of information or entertainment merely by calling a telephone number.[(5)] Of course, even though offered *over* the telephone, and charged to the consumer through his or her monthly telephone bill, these information or entertainment services are not telephone service; *i.e.*, they are not a transmission or transport of communications without regard to content. To the contrary, with these information or entertainment services, the content itself is what is being sold.

Unfortunately, pay-per-call technology and the convenience to the consumer this technological advance affords also presented tempting opportunities to those who sought to exploit technology to defraud consumers. Indeed, shortly after the introduction of 900 numbers, the technology was commandeered by unscrupulous operators who used it to deceive and defraud consumers. Unlike other scams involving the telephone, the 900-number scammer did not face the task of persuading the consumer to divulge his or her credit card account number to an unknown entity. Scams using 900 numbers needed only to convince consumers to make the call. Once the call was placed, the consumer was billed for the alleged service or information and often had no means to contest the charge. The unwitting victim incurred charges -- often exorbitant charges -- not for transmission of the call (as would be the case in a conventional call), but for information or entertainment, *just by completing a 900-number telephone call*. In many cases, consumers never received the promised information or service.

The Commission responded to the abuse of pay-per-call technology with aggressive case-by-case law enforcement.[(6)] This approach, however, was insufficient to prompt the pay-per-call industry to adopt appropriate self-regulatory measures, and the abusive practices continued. As a result, Congress ultimately enacted the Telephone Disclosure and Dispute Resolution Act of 1992[(7)] ("TDDRA"), which directed both the FTC and the Federal Communications Commission ("FCC") to issue regulations governing the pay-per-call industry. The Commission adopted the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("900-Number Rule" or "Rule"), 16 C.F.R. Part 308, on August 9, 1993.[(8)] Since the TDDRA regulatory scheme was put in place there has been a significant reduction in complaints regarding 900 numbers.

Our experience to date suggests that the pattern observed with pay-per-call technology may be repeating itself in a broader way, with vendors, not just of information and entertainment services, but a host of other services as well. In the short period since cramming first emerged, complaints about unauthorized charges on consumers' phone bills have climbed to the number five spot among the categories that generate the most complaints received by the Commission's Consumer Response Center.[(9)] If unchecked, abuse of access to the telephone billing and collection system by vendors of all sorts of services will likely inflict the same sort of consumer injury as occurred with pay-per-call services before the enactment of TDDRA and promulgation of the FTC and FCC rules that now tightly regulate pay-per-call technology.

In fact, in the Telecommunications Act of 1996,[(10)] Congress granted the Commission broad authority to expand coverage under the 900-Number Rule. The Commission has initiated a rulemaking proceeding to determine how to fulfill the congressional mandate of the Telecommunications Act.[(11)] The staff of the Commission currently is reviewing the comments and other record evidence amassed to date, including what we have learned about cramming. Once this review has been completed, the Commission will decide how the Rule should be modified, both under existing authority of TDDRA and new authority of the 1996 Act, to reach services not currently covered that are "susceptible to the unfair and deceptive practices" that prompted Congress to enact TDDRA.[(12)] If amended to encompass cramming, the 900-Number Rule will add to the FTC's arsenal against that practice, enabling the Commission to obtain civil penalties of up to $11,000 per violation. In the meantime, the Commission is aggressively pursing law enforcement actions against cramming under its existing authority under the FTC Act.

III. The FTC's Approach to Cramming

The Commission employs a threefold approach to consumer abuses like cramming. First, the Commission has a mechanism to spot such emerging consumer abuses through systematic collection and analysis of consumer complaint data. Second, using the intelligence afforded by complaint collection and analysis, the Commission identifies appropriate targets for law enforcement action, and files federal district court actions across the country. Through these actions, the Commission seeks and obtains temporary restraining orders, preliminary injunctions, permanent injunctions and other equitable relief, such as asset freezes and appointment of receivers, to halt the targeted unfair or deceptive practices and to preserve assets for consumer redress. Finally, these law enforcement efforts are complemented by consumer education. In all aspects of this strategy, but particularly in the Commission's consumer and business education efforts, we have sought to form new partnerships with private industry and other government agencies.

A. Spotting Trends and Identifying Targets

The Commission's Consumer Response Center (CRC) receives about 3,700 consumer calls, letters, and e-mails per week. As this information is received, it is added to the FTC's database, which currently contains over 190,000 entries. The database enables staff to spot trends, identify companies that should be targeted for enforcement action, and find witnesses to provide evidence to support such actions. To maximize the effectiveness of this database, the Commission sponsors and operates Consumer Sentinel, a secure Internet website available to law enforcement agencies throughout the United States and Canada through which the complaint database can be accessed. The database includes not only consumer complaints received directly by the Commission's Consumer Response Center, but also those submitted by a large number of United States and Canadian law enforcement agencies, as well as private data contributors such as the National Fraud Information Center and the American Association of Retired Persons. Consumer Sentinel is a joint project of the FTC and the National Association of Attorneys General, in cooperation with Canadian partners Canshare and PhoneBusters.

The cramming cases filed to date, described below, as well as a number of ongoing, nonpublic cramming investigations originated with information drawn from the Commission's database.

B. *Targeted Law Enforcement Actions*

The Commission uses the information from its complaint monitoring and analysis to direct and support targeted law enforcement actions. Earlier this month, the Commission initiated two law enforcement actions attacking cramming.[(13)] One of these is *FTC v. International Telemedia Associates, Inc.*[(14)] This case targets a so-called "billing aggregator" and a vendor of audio entertainment. Billing aggregators open the gate to the telephone billing and collection system for vendors, some of whom seek only to use this novel system for fraudulent purposes. Billing aggregators act as intermediaries between vendors of various services and the LECs.[(15)] In this case, the defendant billing aggregator is International Telemedia Associates, Inc. ("ITA"), and its client vendor -- also a defendant -- is Online Consulting Group, Inc. ("Online"). The court granted the Commission's *ex parte* motion for a temporary restraining order against both ITA and Online, and an asset freeze and appointment of a temporary receiver against Online.

Online allegedly advertised "free matching" services with "local singles" in newspapers throughout the country, urging consumers to call a toll-free number. When Online received a call to its toll-free number, it asked the caller where he was calling from and what sort of person he wanted to meet, told him that Online would have a "local single" return the call, and then hung up. Shortly thereafter, the consumer began receiving return calls from purported "local singles." Online did not adequately disclose in the first call, or during any of the return calls, that there was a charge or the amount of the charge. Nevertheless, when the consumer later received his telephone bill, he was shocked to find exorbitant charges -- described as collect or direct calls from a number in Deerfield Beach, Florida -- billed to his telephone number at the rate of about $4 per minute. Many consumers were charged hundreds of dollars on their phone bills for Online's audio entertainment service delivered through return calls.

ITA, the "billing aggregator," allegedly played a key role to enable Online to spring this unpleasant surprise on the consumer. ITA received from Online billing information that Online generated when consumers called Online's toll-free numbers. ITA then forwarded this billing data to the LECs to be included on consumers' phone bills. Online used ANI equipment to generate this billing data. ANI technology identifies the *telephone number* from which the call originates, but cannot identify the *caller*, and cannot determine whether a caller is the line subscriber for the line from which the call originates. Because of the shortcomings of ANI as a basis for billing, in numerous instances, ITA caused line subscribers to be charged on their phone bills for Online services ordered and received by someone else who had used their telephone, but who did not have authorization to incur charges for those services. Legally, this is as indefensible as it would be for any other retailer to bill a line subscriber for goods or services delivered to some other caller's house, simply because that caller used the line subscriber's telephone to place the order for the goods or services.

According to the Commission's complaint, ITA not only took care of billing for Online, and forwarded to Online consumer payments collected by the LECs, it also handled complaints about charges for Online's services. ITA's name and toll-free number for billing inquiries appeared prominently on the ITA page of the consumer's telephone bill. Many consumers allegedly had difficulty in reaching ITA, and once they succeeded in doing so, found ITA not very responsive. Allegedly, ITA had the contractual authority to forgive Online charges, but often told consumers that only Online could make that decision.

The complaint alleges a number of specific deceptive or unfair practices that violate Section 5 of the FTC Act. First, the complaint alleges that Online falsely represented that its matching service was free, and that it failed to disclose material information about the cost of its audio entertainment services. Second, the complaint alleges that both Online and ITA falsely represented that a line subscriber to a telephone line is legally obligated to pay for audio entertainment services, simply because his telephone was used to call Online's toll-free number. Third, the complaint alleges that both Online and ITA unfairly billed consumers for unauthorized charges. It is an unfair act or practice to bill and collect charges from line subscribers who have not accessed or purchased Online's audio entertainment service and who cannot reasonably avoid these billing and collection efforts because Online's service is accessible through unblockable 800 numbers and is delivered through unblockable return calls. Finally, the complaint alleges that Online violates the Commission's 900-Number Rule by using toll free numbers in a manner that results in the calling party being called back collect for the provision of audio information or simultaneous voice conversation services.

The Commission filed a second lawsuit that targeted cramming this month against another billing aggregator and vendor. The case is *FTC v. Hold Billing Services, Ltd.*[(16)] Hold Billing Services, Ltd. ("Hold") is a billing aggregator that served, among other clients, Veterans of America Association, Inc. ("VOAA"), a service vendor. VOAA, also a defendant in this action, allegedly induced consumers unwittingly to enter a purported sweepstakes, without adequately disclosing that it construes each completed entry form as an authorization to bill a package of services to the telephone number filled in on the form.

Hold allegedly processed the billing data VOAA drew from submitted sweepstakes entry forms into the electronic format required by the LECs, and forwarded this information to the LECs so that charges for VOAA's package of services could be inserted into line subscribers' telephone bills. Hold also allegedly acted as a conduit to VOAA for revenues collected from consumers by the LECs for VOAA's services. The complaint against Hold and VOAA alleges three violations of Section 5: first, that VOAA fails to disclose, in a manner likely to be noticed and understood by consumers, the material fact that VOAA construes sweepstakes entries as authorization to charge consumers for its services; second, that in connection with their billing and collection activities, VOAA and Hold falsely represent that consumers who did not purchase VOAA's services are legally obligated to pay for them merely because the consumers' phone numbers appeared on entry forms; and third, that VOAA and Hold unfairly bill line subscribers for services on their telephone bills solely on the basis of sweepstakes entry forms submitted by third parties, about whom the line subscribers have no knowledge, or who were not authorized by the line subscriber to incur charges.

Unfortunately, the pattern of alleged unlawful conduct targeted in these two cases is by no means unique. The staff of the Commission currently is investigating a number of other billing aggregators and service vendors. Like ITA and Hold, these billing aggregators provide an access point to the telephone billing and collection system for vendors of a multiplicity of services. Some of these vendors are unscrupulous, and employ a variety of ruses to capture consumers' telephone numbers to use for billing charges on their phone bills. For example, some of these vendors use deceptive ads to entice consumers to call a toll-free number, capture callers' phone numbers through ANI, and then, through a billing aggregator, bill recurring monthly charges to consumers' phone bills for "travel club" or "psychic club" memberships. Often the charges are disguised as some other telephone service.

C. *Limitations on Enforcement*

As mentioned earlier, the common carrier exemption from the Commission's jurisdiction, enacted in 1938, is creating unintended complications for our law enforcement efforts in today's technologically advanced and deregulated telecommunications industry. The Commission is aware of service vendors who falsely claim to be exempt from FTC jurisdiction as common carriers,[(17)] even when they are selling entertainment or other services over the telephone.[(18)] These vendors, some of whom may have filed tariffs with the FCC, purport to sell services that arguably may be "basic telecommunications services," as that term is used in Federal Communications Commission (FCC) regulations to determine what kinds of activities characterize common carriers within the scope of that agency's enabling legislation.[(19)] The FTC believes that merely selling what is arguably a "basic telecommunications service" or merely filing a tariff cannot shield these vendors from FTC enforcement action attacking unfair or deceptive commercial practices they engage in with respect to non-common carrier activities. *See* 15 U.S.C. § 45(a)(2). The Commission has taken the position that the statutory common carrier exemption to the FTC Act does not shield the non-common carrier activities of an entity that may otherwise engage in some common carrier activities under another statute. *Massachusetts Furniture*

& Piano Movers Ass'n, 102 F.T.C. 1176, 1213, n.7 (1983); *but see FTC v. Miller,* 549 F.2d 452 (7th Cir. 1977). This position is consistent with the courts' long-standing interpretation of "common carrier" under the Communications Act. *See National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (definition is activities-based, not status-based). Moreover, in some instances, staff believes that these vendors are sham common carriers that do not have the capacity to provide the basic telecommunications services they purport to sell.

IV. Consumer Education

The third component of the Commission's efforts to address cramming is consumer education. In response to a sudden influx of consumer complaints about cramming in the early part of 1998, the Commission's staff rapidly developed a brochure for consumers entitled, "Cramming: Mystery Phone Charges." This brochure is part of a larger effort by the Commission to work both on its own and as a partner with private industry and others to educate consumers on emerging issues in the rapidly changing telecommunications market.

The staff of the Commission sponsored a public workshop on March 18, 1997, in response to mounting evidence of consumer confusion about the bewildering array of telecommunication choices exploding on the market. The conference addressed how to empower consumers to make informed decisions about new products, services and billing methods. Workshop participants included representatives from the LECs, the long distance carriers, consumer groups, industry coalitions, and officials from the FCC, the National Association of Attorneys General and other interested executive branch agencies.

A general consensus emerged that consumers were already confused by current telephone-related advertising, marketing, and billing practices, and that this confusion is likely to get worse as competition for local exchange markets intensifies and new players offering new services enter the telecommunications market. A telecommunications working group was formed to develop consumer education publications to combat this confusion. The Commission hosted the first meeting of the telecommunications consumer education working group on April 24, 1997.

The first publication developed by the working group, "It's Your Call: Shopping in the New Telecommunications Marketplace" was released in January 1997. This brochure describes the various services and charges that commonly arise in the purchase of telephone services and guides consumers through the process of comparison-shopping for telephone services. The cramming brochure described above was the second result of these efforts.

V. Conclusion

In conclusion, the Commission recognizes that the practice of cramming is causing significant harm to American consumers. The Commission has used and will continue to use the full range of investigative techniques, targeted law enforcement actions, and consumer education to attack this growing problem. I appreciate the opportunity to provide testimony today on the Commission's efforts against cramming, and I would be pleased to answer any questions.

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1. The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

2. 15 U.S.C. § 45(a). The Commission also has responsibilities under 40 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq*., which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

3. The exclusions are: "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C.§ 181 et seq.), except as provided in section 406(b) of said Act (7 U.S.C. § 227(b))." 15 U.S.C. § 45(a)(2).

4. 15 U.S.C. §§ 1601-1667f (as amended).

5. Pay-per-call was the first, and remains the only, interactive consumer telecommuni-cations technology available on a nearly universal basis.

6. *See, e.g.*, *FTC v. Transworld Courier Services, Inc.*, C.S. No. 1:90- CV-1635-JOF (N.D. Ga. 1991)*; FTC v. Starlink, Inc.*, 1992-1 Trade Cases ¶69,715 (E.D. Pa. 1992); *FTC v. First Capital Financial, Inc.*, C.A. No. HAR-90-2007 (D. Md. 1992); *FTC v. Interactive Communications Technology, Inc.*, C.A. No. CV F 91018 REC (E.D. Cal. 1992); *FTC v. M.D.M. Interests, Inc.*, C.A. No. H-92-0485 (S.D. Tex. 1992); *FTC v. National Credit Savers*, C.A. No. 91-A-1218-S (M.D. Ala. 1992); *FTC v. U.S. Sales Corp.*, 785 F.Supp. 737 (N.D. Ill. 1992); *Phone Programs, Inc*., 115 F.T.C. 977 (1992); *Teleline, Inc.*, 114 F.T.C. 399 (1991); *Audio Communications, Inc.*, 114 F.T.C. 414 (1991).

7. Pub. L. No. 102-556, 106 Stat. 4181 (1992) (codified at 15 U.S.C. § 5701 *et seq.* and 47 U.S.C. § 228).

8. 58 Fed. Reg. 42,400 (August 9, 1993). The FCC, likewise, as directed by TDDRA, adopted regulations governing the role of common carriers in the 900-number industry. 58 Fed. Reg. 44,773 (August 25, 1993); codified at 47 C.F.R. §§ 64.1505 - 64.1515.

9. As explained in more detail, *infra*, at 11, the Consumer Response Center is a unit created within the Commission staff to interface with the public. Each inquiry or complaint received by the Center is handled by a trained consumer counselor who not only provides the consumer with helpful information, but also gleans information from consumers that is entered into the Commission's law enforcement database.

10. Pub. L. No. 104-104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

11. 62 Fed. Reg. 11,749 (1997).

12. Pub. L. 104-104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

13. The Commission's first action in this general area, *FTC v. Interactive Audiotext Services, Inc.*, was filed April 22, 1998. The defendant in that case allegedly sent look-alike telephone bills to owners of telephone lines for audio entertainment services they had not purchased or received. The defendants stipulated to a preliminary injunction that was entered by the federal district court for the central district of California on June 17, 1998. Press releases describing this case are appended to this statement as Attachments A and B.

14. No. 1: 98-CV-1935 (N.D. Ga. filed July 10, 1998).

15. Billing aggregators processes their client-vendors' billing data into the electronic format required by the LEC, and act as conduits to the vendor for revenues collected by the LECs from consumers for the vendors' services.

16. No. SA-98-CA-0629 FB (W.D. Tex. filed July 15, 1998).

17. See, *supra*, at 2; note 3.

18. The common carrier exemption to FTC jurisdiction is generally not a problem with respect to billing aggregators, such as ITA and Hold, because there is no credible argument that the billing and collection for third parties entails the provision of the basic telecommunications service that characterizes a common carrier. The staff of the FTC have consulted with the staff of the FCC, who agree with our assessment that billing aggregators, acting as the billing and collection arm of vendors, are not common carriers subject to FCC jurisdiction.

19. Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II"), Tentative Decision and Further Notice of Inquiry and Rulemaking, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).