Organic Online Dispute Resolution: Resolving "Cramming" Claims as an Example

By Amy J. Schmitz

Introduction

There is no justice for consumers seeking remedies with respect to their small-dollar online purchases. In most cases, it is not worth a consumer's time and money to sue in court or even file a small-claims court action, and arbitration clauses often preclude consumers' rights to pursue class relief. Companies and consumers know it is usually nonsensical to bring small-dollar claims on an individual basis in light of costs versus likely recovery. It is thus imperative to craft online dispute resolution (ODR) programs that provide consumers with cheap, convenient, and effective remedies. These programs, however, must break free from current top-down dogma and arise organically to fit particular disputes. This article, therefore, suggests key attributes of such programs, and uses creation of a program for resolving "cramming" (improper addition of third-party charges to telecommunications bills) disputes as an example case.

The Internet has created a marketplace free of boundaries for companies and consumers, expanding purchasers' buying choices and allowing them to buy goods from sellers located anywhere inside or outside of the United States. This is beneficial for consumers and companies, and boosts commerce on national and international levels. Consumers, however, are often left with no remedies when an online purchase goes awry. Consumer contracts often preclude class relief, and litigation or arbitration on an individual basis is usually impractical for most buyers, considering claims costs versus the likelihood and amount of recovery. Furthermore, arbitration clauses may curtail access to small-claims court, which may not even be available for many claims due to jurisdictional limits.

At the same time, many companies' informal complaint-handling systems are skewed or ineffective for many consumers. Merchants may ration remedies and cut costs by using what I have termed the "Squeaky Wheel System" (SWS) to reserve remedies for only those consumers who are most persistent and considered economically valuable to the merchants' business.[1] This can effectively prevent the law and economists' proposed "informed minority" from policing the fairness of contract terms and business practices. Companies may use the SWS to appease the relatively few consumers, thereby stopping them from alerting the majority about product and other purchase problems.[2] Furthermore, this boosts merchants' profits at consumers' expense by banking on most consumers' lack of the requisite confidence and resources to become squeaky wheels that capture businesses' attention and obtain remedies.[3]

A key means for addressing the SWS is to create user-friendly ODR systems geared toward the disputes they aim to resolve. ODR builds on negotiation, mediation, arbitration, and other alternative dispute resolution (ADR) processes. ODR has been around for some time, and has been the subject of numerous articles and books in the past decade or so.[4] Nonetheless, ODR systems are often lacking because companies usually create them with a top-down approach. Companies impose one-size-fits-all processes on consumers through boilerplate contacts and enforce them through legalistic terms that often rely on the courts' strict enforcement of arbitration contracts under the Federal Arbitration Act (FAA). Such formulaic ODR terms may be useful in some cases, but there is a need for more contextualized systems

Amy J. Schmitz, Professor of Law, University of Colorado Law School. J.D., University of Minnesota Law School; B.A., Drake University. Her research and writing explore consumer, contract, and arbitration law, as well as social, economic, and empirical aspects of contracting behavior and outcomes. Many of her publications are posted on her Social Sciences Research Network author page at *http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=522704.* Her nonprofit Consumer Outreach Web site is at *http://myconsumertips.info.* She thanks David Bennett, Chelsea Carr, and Laura Streit for their research assistance. She also thanks Diana Avelis for her comments and Colin Rule for his collaboration in crafting an online remedy system to address "cramming."

that seek organic and communal resolutions. The Internet creates connections in many ways, but allows for relational disconnection that erases the sense of responsibility needed for effective- and satisfactory-claims resolutions. It is time to recapture the original spirit of ADR through online processes.

This article discusses considerations related to that task. It also proposes the creation of an ODR system for resolving cramming disputes as an example case.[5] Cramming occurs when a third party, unaffiliated with a customer's telecommunications company, adds charges for such things as horoscopes, subscriptions, and long-distance telephone services to the bills the company sends to the customer. The Federal Trade Commission (FTC) has called wireless telephone bill cramming "a significant consumer problem," and the Federal Communications Commission (FCC) already has issued some regulations aimed at squelching cramming with respect to wired (or landline) telephone billing.[6]

Most third-party charges on telecommunications bills are unauthorized, and harm consumers who may not even realize that the charges have been added to their bills. Commonly, consumers do not notice these charges because they are relatively small, usually ranging from $1 to $10 per month. At the same time, many people have their bills sent to them electronically (generally referred to as "E-billing"), and have their bill payments automatically debited from their bank accounts or credit cards (generally referred to as "auto-pay"). The telecommunication companies have little incentive to block third-party billings because they collect a percentage on these billings.

The minority of consumers who do notice the charges must contend with the SWS in seeking remedies. Many of these consumers give up their quest for remedies after they contact their telephone companies about a cramming charge, and a company representative tells them they must contest the charges with the third-party billers directly. Chasing the third parties in question is usually futile because they may be fraudulent or impossible to locate. Moreover, they often provide scant customer service and insist that consumers have authorized the charges through a text message or some other unverified means.

Cramming victims do not have the same sort of "chargeback" remedies that they have with respect to unauthorized charges on credit cards. Some telephone companies will credit consumers for reported cramming charges without dispute. Some companies also will give customers an option to block third-party billings. This depends on companies' policies and how well they train their representatives and the extent that their customers are even aware of these policies. Accordingly, such policies generally benefit only the most persistent and informed consumers, the squeaky wheels.

The FCC and FTC have not mandated that telephone companies automatically provide consumers with credits for third-party charges. Instead, they have issued more limited regulations with respect to wired telephone billings, and continue to debate the best approach for addressing cramming on wireless telephone bills. Furthermore, neither the FTC nor the FCC is clearly responsible for addressing the cramming problem because they share jurisdiction to the extent that the FTC regulates the billing aggregators and the FCC regulates the telephone companies. Moreover, the FTC and FCC have not spoken with one voice. The FTC has advocated for stronger regulations and has forged ahead with enforcement actions, while the FCC has been noticeably reserved in its response.

Nonetheless, state attorneys general and consumer groups clamor for attention to the cramming problem,[7] and both the FTC and FCC have seen a surge in consumer complaints about unauthorized third-party charges on both wired and wireless telephone bills.[8] The number of reported complaints, however, undoubtedly understates the full extent of cramming by a substantial amount. Again, this is because consumers usually do not discover the charges, let alone have the time or resources to file complaints.[9] Accordingly, the FTC seeks to change the FCC's allowance for telephone companies to add these third-party charges to consumers' wired telephone bills, and has proposed that the FCC should issue regulations requiring wireless providers to give customers the option to block all third-party charges from their bills.[10]

Cramming on telephone bills therefore creates a strong case for creation of an ODR program targeted to provide consumers with remedies in an area in which they are often left without satisfying recourse. This article thus proposes a remedy process for efficiently and fairly resolving these cramming disputes. The article also highlights key considerations in crafting organic and satisfying ODR programs, and aims to open discussion of such programs designed to resolve disputes in other contexts. The goal should be to create targeted and contextualized ODR programs designed to provide consumers and companies with efficient, user-friendly, and satisfying options for reporting and resolving their disputes. Again, this article only introduces the issues and seeks to spark more comprehensive discussions related to creation of contextualized ODR processes.

Benefits of ODR to Address Cramming

Computer-mediated communication (CMC) has allowed consumers to regularly communicate with each other and companies *via* email, Internet chat rooms, blogs, and social networking sites such as Facebook and Twitter.[11] Wireless telephones also have become a communication necessity, as parents learn that it often is easier to reach their children through text messages than by any other means. These forces have combined to make ODR logical and necessary for resolution of disputes.

At the same time, the rise of CMC has led to the diminished importance of face-to-face (F2F) communication, perhaps to the detriment of relational intimacy. Nonetheless, CMC's benefits outweigh its drawbacks when it comes to opening new avenues for consumers to obtain remedies with respect to their purchases. CMC offers flexibility and efficiencies that create great promise for expanded development and use of ODR, which dispels with the costs and structures of F2F meetings and proceedings.[12]

ODR can utilize a wide variety of communication mechanisms. These include Skype, instant messaging, chat rooms, email, cloud computing, text messages sent by telephone, and videoconferencing.[13] This saves time and money for companies and consumers who seek to resolve disputes without the need to schedule for travel and other time and costs associated with traditional F2F mediation, arbitration, and litigation. ODR is therefore especially attractive for resolution of small claims that consumers would otherwise drop due to costs related to F2F dispute resolution.[14] Indeed, this is why the FTC has been interested in fostering ODR for some time.[15]

Although ODR has suffered setbacks due to uncertainties and security issues, its benefits continue to outweigh its costs.[16] ODR allows for flexible scheduling and asynchronous communication, as well as real-time dialogue.[17] Furthermore, ODR encompasses various processes and degrees of CMC use. Some dispute resolution providers only use it for paperless case filings, while others administer numbers-focused settlement processes such as Cybersettle's "double-blind-bidding," using logarithms in arriving at settlement amounts deemed proper for parties' disputes.[18] ODR also has evolved to allow for online mediation and binding online arbitration.[19]

Online arbitration is distinct from other forms of ODR processes because it culminates in a final third-party determination.[20] This finality makes it especially beneficial for consumers who seek a substantive determination on their claims and speedy access to remedies based on that determination. Arbitration also differs from other ODR to the extent that it is less reliant on relational benefits of F2F interactions. This makes it especially appropriate with respect to online purchases and other similar small claims involving individuals who have never met each other in person.[21]

All of the various online processes are distinct from litigation because of their private nature. Litigation continues to play an important role in dispute resolution and development of the law, but it is not necessary for resolution of all claims. Furthermore, courts are already congested; therefore, litigation can best fulfill its public functions when supported by ADR and ODR.[22] Moreover, ODR is an especially cost-effective means of ADR owing to its convenience, speed, low cost, and sustainability. Furthermore, online arbitration offers enhanced potential to provide faster and more concrete results stemming from its binding nature and reliance on documentary evidence. Moving arbitration online also may help address escalating concerns regarding onerous pre-dispute consumer arbitration clauses. Nonetheless, any ODR must be properly regulated to ensure adequate notice, low cost, convenience, safety, and other indicia of fair procedures.[23]

Key Considerations in Crafting ODR to Address Cramming Complaints

Fairness issues, security concerns, and lack of consumer awareness have hindered ODR's development. Companies often control the processes applicable for disputes with their customers using a top-down approach. This leads to customers' understandable skepticism and distrust for ODR. Furthermore, companies often reserve remedies for only the minority of consumers who are persistent with their complaints.[24] With respect to cramming, for example, consumers usually give up on their claims after they receive no remedies through initial phone calls and emails. Consumers also are dismayed when federal and state regulators do not respond to the cramming claims they file through governmental and other public processes. ODR may therefore give consumers needed avenues for low-cost and convenient dispute resolution that simultaneously please companies with the accompanying efficiency benefits. As Professors Katsh and Rifkin highlighted with respect to ODR over ten years ago, however, any process must be designed to address cost, convenience, trust, and expertise considerations.[25]

Low Cost

Many merchants already include predispute arbitration clauses in their consumer contracts in hopes of escaping class actions and the costs and publicity of litigation. These companies especially fear the bad publicity and large settlements often associated with class claims. Accordingly, merchants adopt binding arbitration programs, and have become increasingly interested in using online arbitration to avoid the costs of F2F dispute resolution processes.

ODR also offers significant savings for consumers. Cost is a key factor in consumers' decisions to pursue or forgo any claims, especially small ones such as those associated with cramming disputes. Consumers must balance the costs of pursuing claims against the size of the claims, and temper this computation with the likelihood of success, and of actually collecting on their claims. Currently, this structure often leads consumers to forgo cramming claims, but a well-designed ODR process could change the equation and make the pursuit of claims worthwhile for consumers.

ODR can be carried out more cheaply than can in-person dispute resolution processes because it saves parties from the substantial expense of traveling to F2F meetings and proceedings. Cost savings also result from use of asynchronous communication, which allows parties to communicate at different times. Parties can therefore make factual and evidentiary submissions on their own schedules, without having to miss work or arrange for childcare. In addition, these processes may ease or eliminate parties' legal costs because they are less formal and legalistic than litigation and F2F arbitration.[26]

The low cost of these ODR services already has prompted some E-merchants to offer these services to their customers for free, or for a relatively low fee. PayPal, for example, offers its customers a free ODR service to access speedy resolution of claims with respect to purchases made on eBay. With this as a model, other companies have become increasingly interested in adopting such online programs to curb dispute resolution costs. These programs also foster goodwill by providing consumers with some assurance of a means for pursuing complaints if an issue should arise with respect to their purchases. Policy-makers also have promoted ODR for the potential of cheap and efficient resolution of consumer disputes.

Not all ODR processes are cheap, however. The costs of ODR services increase with the complexity of the case and process. Complex ODR systems may require additional training, legal representation, and costly technological equipment. They also assume users have the high-speed Internet access and capacity necessary for adequately presenting their cases. Merchants who administer ODR processes with their customers for free also may consciously or subconsciously skew their processes in their favor.

That said, trustmark programs such as the Better Business Bureau's (BBB) seal discussed below could be linked with an ODR program to promote commercial honesty and address bias concerns. With respect to cramming, the FCC or FTC may help alleviate costs and related bias concerns by subsidizing the process or requiring billing companies to share those costs, thereby spreading expenses among companies and making it free for consumers.[27] Companies also could fund a process controlled by a properly regulated and independent third party.[28] Dispute resolution providers can also ease consumers' up-front costs by allocating costs in final awards and/or allowing for payment of fees after disputes are resolved. This would help ease access problems caused by high up-front fees, such as those that have been criticized for their "chilling effect" on claims in F2F arbitration.[29] Postresolution fee payment also helps ease consumers' skepticism regarding the safety and fairness of an online process.

Convenient Communications

Costs aside, companies and consumers in the digital age may simply seek the convenience of CMC. Individuals depend on their laptop computers, tablets, and smartphones to connect them with work, family, and friends, and may actually be more comfortable communicating through these devices than in person. Many consumers and company representatives would therefore happily resolve their disputes using these devices in lieu of litigation or other F2F processes. This makes ODR very attractive for both companies and consumers.

ODR processes are generally more convenient than F2F litigation, arbitration, or other ADR processes because they use CMC, thereby saving parties from having to attend hearings or meetings in person. They also save parties from the time and hassle of locating and traveling to hearing sites, let alone arranging childcare or missing work. Asynchronous communication also enhances convenience by allowing individuals to reply and provide information at different times. For example, a company representative may prefer to respond to work-related ODR communications during the work day, while consumer complainants may only have the time to deal with their claims in the evening after getting home from work. Family duties also may influence when an individual has time to work on his or her claims. Asynchronous communication therefore eases the scheduling challenges of F2F meetings.

Nonetheless, real-time communications are sometimes necessary to enhance ODR processes. Therefore, these processes may be supplemented with Skype, teleconferencing, chat rooms, and other online meeting methods when needed. For example, real-time conferencing may be necessary for cross-examination and full assessment of witness credibility, and for live demonstrations related to a case. Asynchronous submission is usually sufficient for party statements, briefs, affidavits, and other evidentiary documents, but dispute resolution providers must remain flexible and open to facilitating virtual meetings when necessary. Providers must also be careful to balance fairness and efficiency in preventing parties from abusing meeting requests or impeding a process.

Online arbitrators, mediators, and other ODR providers must also be vigilant in squelching needless hostility. Research indicates that individuals are significantly more hostile in virtual negotiations than they are in F2F negotiations.[30] This is especially true for women, who may feel less constrained by social norms and expectations when communicating online instead of F2F or over the telephone.[31] CMC can be beneficial to the extent that it allows women to feel more comfortable in being assertive and in voicing their needs. CMC also may dispel biases and subconscious categorizations that reportedly cause women to reach less favorable results in negotiations than do men. This may help explain study findings that women achieve higher profits and better results in virtual, as opposed to F2F, negotiations.[32]

Time-Restricted and Tailored Procedures

Convenience and cost-savings disappear when dispute resolution processes are seemingly endless and uncontrolled. This is a main criticism of litigation resulting from courts' backlogs, and sometimes, indeterminate schedules.[33] In-person arbitration and other ADR processes can also suffer similar lag when there are difficulties in setting meetings and hearings. Individuals are notoriously overscheduled, and F2F meetings require that all individuals not only are present at the same time but also have time for any required travel to be at these meetings. Furthermore, it may be particularly tricky for arbitrators and mediators to fit ODR meetings into their schedules, which may already be packed with duties related to their "day jobs" as practicing lawyers or other related employment.[34]

Although CMC saves ODR processes from many of these scheduling and timing issues, time restrictions are essential to protect these processes from suffering lags. For example, an online process becomes inefficient if parties do not respond to communications in a timely manner. Processes are also ineffective if parties are permitted to submit additional evidence and arguments indefinitely.

Accordingly, ODR providers must properly control ODR processes and enforce time restrictions. Online arbitrators, in particular, should take charge of disputes as the neutrals who issue binding determinations. These arbitrators should insist on timely evidentiary submissions and exercise their discretion in curbing the volume of such submissions. They should also have power to impose sanctions against recalcitrant parties in order to ensure parties' compliance with deadlines and evidentiary limits. The arbitrators should then abide by strict rules that require them to issue awards shortly after submissions are closed, usually within 7 to 14 days.

Satisfying and Interactive Processes

Cost-savings, convenience, and speed are important, but should not conquer individuals' ability to present their cases or otherwise squelch their feelings of satisfaction with a process. Unfortunately, top-down ODR processes often overlook the relational aspects of dispute resolution and the importance of self-expression. Fill-in-the-blank claims processes and regimented blind-bidding mechanisms for trading-settlement offers may quickly end disputes, but they do not allow parties to tell their stories or obtain substantive determinations of their claims.

Regimented or algorithmic processes may be beneficial for some disputes, such as settlement of parking fines. Cramming and more substantive or complex disputes, however, often involve evidentiary questions and unresolved issues the parties want answered. In such instances, contextualized ODR processes may be more satisfactory and effective.

It is therefore important for ODR processes to allow for various types of electronic presentations and submissions. As noted above, currently used CMC methods such as documentary submissions, emails, and dedicated electronic drop boxes for claims materials may be more than sufficient for resolving many cases. Nonetheless, some disputes call for use of Skype and other teleconferencing methods to ensure more effective presentation of parties' arguments or witnesses' testimonies. Incorporation of video also may enhance the neutral's assessment of witness credibility.

Individuals involved in any ODR process may also have different language needs and writing abilities. Not all consumers are effective writers, and many have different reasons why they are unable to type. These are instances in which use of video may again provide added satisfaction for some individuals. Increased use of voice transcription programs that convert a computer user's spoken words into text also may address some individuals' inability or discomfort with typing.[35] Similarly, translation programs help bridge lingual divides.[36] Although these programs can be expensive and are not always perfectly accurate, they have made great strides in allowing individuals to engage in dialogue regardless of their native languages and typing skills.

Organic dispute resolution systems that are bottom-up rather than top-down may also boost consumer satisfaction by giving consumers a role in designing the processes applicable to their claims. Individuals are more likely to respect and abide by terms if they have exercised choice in selecting those terms. Professor Eigen has evaluated the assumption that people obey contracts mainly because their consent creates a legal obligation, even in situations in which a contract is low-risk and for low stakes.[37] He found that legal threats are not as powerful as assumed in prompting performance. Instead, he found that individuals are more likely to obey a contract or perform a task if they have had input in the applicable terms.[38]

Furthermore, Professor Eigen found that legal threats were no more effective than general or social requests in prompting performance and that moral appeals to perform a task were the most effective. Professor Eigen concluded: "The research also suggests that demands for enforcement framed in moral terms—as a promise made that must be lived up to—similarly yield a greater likelihood of compliance than did threats of legal action, instrumental appeals, or pressure to conform socially."[39] Contrary to top-down legal assumptions, individuals may respond to their sense of responsibility over any fear of lawsuits.

In the ODR context, this suggests that individuals are more likely to comply with dispute resolution processes and outcomes if they play a role in designing the process terms. Furthermore, relational and moral connections are more likely than legal threats to prompt compliance with any settlement. Thus, companies should give consumers options (that is, choices in regard to mediation or arbitration, means of communication, timing, etc.) related to their ODR programs.

Moreover, processes should be interactive, and seek to inspire individuals' moral investment and sense of responsibility to comply with the resolution reached through the process.

Trust-Building through Disclosure, Education, and Trustmarks

Trust is important with respect to ODR, just as it is with any online dealings. Consumers and companies will not submit disputes to a process they do not trust.[40] Merchants who require consumers to resolve disputes through online processes and those who provide these processes must earn trust through forthright, honest, and reliable service. They should develop, post, and abide by due-process protocols that obligate companies to notify consumers of their dispute resolution processes and explain how to obtain further information regarding these processes. Trust also should be fostered through consumer education, provider registration, and verified trustmarks.

An initial step for building trust is to establish merchant disclosure rules for contract terms requiring consumers to resolve disputes through ODR.[41] This could be done through a required rubric that E-merchants could conspicuously post on their sites with basic information about the merchants' use of ODR, how it works, its binding effects, any consumer fees, and secure links for filing claims and gathering further information. This could be presented in an easy-to-read grid, such as that required for credit-card statements. Such a disclosure should be noticeable and user-friendly, and not cause information overload that dissuades consumers from reading the terms.

Furthermore, companies should not impede the likelihood that consumers will read contract terms by obfuscating the terms with external information. As Professor Eigen found in his research, external information may hinder consumers from reading form contracts.[42] In his study, researchers gave study participants a lengthy and tedious Internet survey in order to win a DVD. Researchers then placed participants under different conditions, ranging from requiring them to promise to complete the survey per a boilerplate contract to no contract terms or a contract accompanied by extratextual information. The participants' mean time reading the contract overall was only 54.1 seconds, but just one additional minute of reading led to a 17.34% increase in contract performance as measured by number of survey questions answered.[43] Moreover, Professor Eigen found that participants' time spent reading declined as the amount of extra-textual information provided increased.[44]

Indeed, most consumers simply do not read form contract terms, especially predispute terms that are only applicable if and when a dispute arises. Accordingly, it is important to earn consumers' trust in ODR processes by providing them with assistance regarding these processes after disputes develop. ODR providers should therefore help consumers understand their processes and feel more comfortable resolving disputes online by posting resources and establishing free simulation exercises that parties can use in preparing claims.

Many providers already explain their processes on their Web sites, and some post demonstrations and additional resources. For example, the Electronic Courthouse provides the steps on its Web site explaining how the ODR process works, and includes links to its rules of procedure and example cases.[45] The Web site also walks interested parties through a sample case. Similarly, ODR program administrators should provide such resources through neutral portals. The aim should be to enhance consumers' comfort with the program, and to gain their trust and commitment to comply with resolutions reached.

Nonetheless, policy-makers, providers, companies, and consumer groups should work together to craft requirements that benefit all involved. This means that any disclosure or resource requirements should not be difficult or costly to implement.[46] Regulations also should enhance awareness and education regarding ODR options, while simultaneously increasing transparency to combat consumers' negativity toward companies they fear as untrustworthy. Currently, consumers are surprisingly unaware of the ODR and complaints processes already in existence. Accordingly, there should be announcements and independent portals with basic information about existing ODR and complaint-handling options.

Such transparency would have greater power in enhancing trust in the process if coupled with licensing requirements. Currently, there are no licensing or registration requirements for ODR providers. Instead, consumers are vulnerable to illegitimate and incompetent services, and some providers are very difficult to contact. They should therefore be subject to registration requirements that mandate, among other things, procedural fairness rules and proper training for mediators and arbitrators. Such registration would help give providers and their neutrals incentive to remain unbiased and balanced, and empower consumers to gain familiarity and comfort with an ODR process.[47]

Such registration would also comport with current momentum for enhanced consumer protection initiatives launched by the Consumer Financial Protection Bureau (CFPB), a bureau that the Dodd-Frank Act created to protect consumers from predatory financial products and services.[48] A government entity such as the CFPB could undertake provider registration and maintenance of a searchable database. This could help ensure neutrality of the database and registration process, and build the public's trust in legitimate providers and processes. With regard to cramming, the FCC or FTC could undertake these duties with respect to approved dispute resolution providers dedicated to resolving third-party billing disputes.

Consumers should have free access to any provider databases. Furthermore, such databases must be easily searchable, and include arbitrators and mediators' credentials to assist users in selecting neutrals to decide their disputes or facilitate settlements. A database also could post redacted online arbitration opinions that simply provide the parties' names, award amounts, case types, and minimal explanation.[49] Any proprietary or sensitive information would be redacted, or sealed if necessary, to protect confidentiality concerns.

Of course, current government cutbacks may hinder regulators' willingness to take on such custody and oversight of dispute resolution provider databases. Companies and/or providers, however, may ease regulators' budget concerns by accepting minimal costs of funding the database in order to garner consumers' trust in the online processes. Furthermore, an independent information and communication technology (ICT) group or another private organization unaffiliated with providers may wish to undertake registration and database maintenance tasks. This private independent group could replace the government in hosting a monitored database of registered providers and their neutrals.

Registration also could be coupled with a centralized seal or trustmark program for providers and companies that use these ODR processes. For example, the BBB accredits, and thus provides its trustmark, or seal, to companies that agree to and meet the "BBB Standards for Trust."[50] These standards include maintaining honesty and transparency in advertising and selling, and seeking to resolve disputes through internal and external means, including BBB arbitration.[51] Furthermore, companies agree to abide by any BBB arbitration decisions.[52]

A trustmark system for ODR providers and merchants who use approved processes must be uncomplicated and independent, as is the BBB's program. Trustmarks are meaningless without public recognition and respect. This is at the core of the BBB's seal program. Accordingly, a robust trustmark system for merchants' use of ODR should be independent and verified. The government or the same independent group that maintains the provider-registration database could issue and monitor the trustmark. Again, costs could be shared by ODR providers and companies that use approved processes. This cost-spreading would minimize individual expense for all involved, thus addressing the typical criticism of regulation.

ODR providers could post this verified trustmark on their Web sites after they register successfully on an approved database. Merchants who promise to use these providers to resolve disputes with consumers also could post the trustmark to indicate this commitment to ODR and provide consumers with this assurance of an online means for seeking remedies for purchase problems. A trustmark symbol on a company's Web site could then be electronically linked with the provider database so that consumers could easily verify the legitimacy of the trustmark and gather information about provider neutrality, training, and quality. The database also would be a "one-stop shop" for consumers selecting providers to decide or facilitate settlement of their claims when disputes arise.

Using Cramming Claims for Creation of an Example Process

Cramming creates problems for telephone companies and consumers. Consumers struggle to obtain remedies when they fall victim to fraudulent third-party billings, while companies struggle to separate fraudulent from legitimate billings that third parties submit to them for inclusion in consumers' telecommunications bills. At the same time, government regulators have been uncertain how best to regulate these third-party billings, and how to shoulder the costs of attempting to catch crammers.

Companies and Consumers' Cramming Struggles

Telephone service providers increasingly compile and send bills to consumers that include not only regular telephone service charges, but also other "bundled" telecommunications services charges such as Internet access and cable or satellite television. Consolidated billing for telecommunications services, or "bundling," is generally efficient and beneficial for consumers and companies. It saves time and resources for all involved, and provides convenient means for consolidated billing and payments. Companies may also profit from business relationships and linked marketing.

Furthermore, companies and consumers benefit from E-billing and automatic payments. E-billing allows companies to eliminate the costs of sending paper bills, and benefits consumers who prefer to manage finances online and tend to accidentally throw out paper bills with the junk mail. This works in tandem with automatic payments, which help assure companies and consumers that payments will be made by the required due dates. Despite these benefits, E-billing and automatic payments encourage consumers' lack of vigilance toward their bills, thus decreasing the likelihood that consumers will notice third-party charges.

Crammers are third parties outside of the common telecommunications providers for bundled telephone, Internet, and television services. These third parties may add charges to consumers' telephone bills for services ranging from special long-distance access to weekly horoscopes or pay-lot parking. These third-party charges are legitimate if consumers authorize the charges by telephone, email, or through a written contract. This can benefit consumers to the extent that it provides the convenience of paying by telephone, delays bill payment without adding to credit-card debt, and creates a financing mechanism for consumers who lack access to credit cards or other means of payment. Third-party billing also benefits companies that use payment by telephone to cheaply market services such as subscriptions that generate ongoing payments.

The problem is that most of these third-party charges are unauthorized—thus earning the "cramming" label. Crammers often sneak charges into text messages or consumers' acceptance of online contracts. They bank on consumers' failure to inspect all of their bills and propensity to overlook fine print embedded in advertisements for goods and services offered as "free."[53] Cramming charges are also especially difficult to detect because they are usually for small amounts, which nonetheless add up over time.

At the same time, telephone companies that receive the third-party charges are not legally responsible for ensuring the legitimacy of these charges. These companies posit that verifying every charge would burden these companies, and result in higher telecommunications bills for consumers. Furthermore, there is little incentive for telephone companies to take on the procedural costs of blocking or alerting consumers about such charges. Instead, these companies benefit from third-party billings because they collect related fees or a percentage of third-party charges. In the past ten years, telephone companies profited over a billion dollars by placing third-party charges on their phone bills.[54] Verizon stated in a 2011 Senate hearing that it "receives a flat fee between $1 and $2 per charge for placing third-party charges" on its customers' bills.[55]

Telephone companies also resist regulations that would require them to provide disclosures regarding third-party billings at the time consumers open their accounts. They argue that most consumers will not likely face cramming problems. Many telephone companies also state that regulations are unnecessary because they already use internal "best practices" such as blocking third-party charges upon request and giving consumers credits for unauthorized third-party charges. Consumers, however, overwhelmingly request stronger protections from cramming. They report endless stories of unauthorized charges appearing on their telephone bills, and vent irritations when seeking assistance from the telephone company and government regulators. Moreover, crammers often target elderly and young consumers who may be least likely to notice the charges or have resources for seeking remedies.

FTC's Conflicted Urgings for Stronger Regulation of Third-Party Billing

The FTC stated in its July 2012 comment to the FCC that "mobile cramming is likely to continue to grow as cramming schemes expand beyond the landline platform and mobile phones are more commonly used for payments."[56] It also emphasized that cramming charges are usually unverified and under $10 a month, thus evading easy detection. The FTC therefore unanimously recommended default blocking of third-party billing for wired telephone bills.[57] The FTC, however, did not advocate for automatic blocking with respect to wireless telephone carriers because charities and other legitimate services are beginning to use "mobile billing" by wireless telephones, which builds on the expansion of smartphone and other mobile technologies.[58]

This creates unclear policy direction to the extent that the FTC urges automatic blocking for third-party charges on wired, but not wireless, telephone bills despite its acknowledgement of the cramming problems associated with mobile billing. Nonetheless, the FTC has urged the FCC to require that all wireless providers at least offer their customers the *option* of blocking all third-party charges. The FTC also has urged wireless providers to clearly and prominently inform their customers of this option, and explain how to block such charges when consumers establish and renew their accounts.

The FTC has also called for wireless providers to provide a clear and consistent process for customers to dispute suspicious charges and to obtain reimbursement. The FTC believes that such measures should be mandated by law or regulation to ensure that consumers have baseline protections.[59] Despite these urgings, however, regulators have not yet instituted such a claims-resolution process, leaving consumers with no concrete remedy for resolution of their cramming claims. Furthermore, consumers must often endure the added headaches of expanding security and fraud concerns that have accompanied the rise of mobile financial services.[60]

The FCC's Most Recent Final Rule

The FCC, which regulates telecommunications providers, has not adopted the full panoply of rules that the FTC advocates, and continues to struggle with how to best regulate third-party billings on wireless telecommunication bills. The FCC states that it is proceeding with caution in order to minimize regulatory costs and allow the telecommunications industry to find means for policing their own practices. These regulators hope that providers will address and cure cramming problems, but the problems persist and consumers continue to complain.

On May 24, 2012, the FCC announced a final rule on Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming") with respect to wired telephone carriers alone.[61] The rule requires that

1. Wired carriers that offer blocking of third-party charges must clearly and conspicuously notify consumers of this option on the carrier's website, at the point-of-sale, and on the consumers' bills;
2. Third-party charges must be placed in a section of the bill distinct from carrier charges; and
3. The wired carrier must provide separate subtotals on the bill for carrier charges and non-carrier charges.[62]

Overall, the rules aim to require clear disclosures regarding third-party charges on wired telephone bills, but they do not require companies to verify, automatically block, or otherwise take responsibility for remedying cramming on telephone bills.[63] The FCC's rule requiring that third-party charges appear in a separate section of telephone bills aims to provide means for alerting consumers of these charges.

However, it places the burden on the consumer to contact the third party, immediately address any unauthorized charges, and proactively prevent further unauthorized charges from appearing.[64]

On October 26, 2012, the FCC announced that the Office of Management and Budget (OMB) approved, for a period of three years, the collection of information associated with the Cramming Rule announced on May 24, 2012.[65] The rules, however, did not go into effect on May 24. Instead, the requirement to place disclosures at point-of-sale and on the telephone companies' Web sites went into effect on November 13, 2012, and the remainder of the requirements became effective on December 26, 2012.[66] Again, these rules only affect wired telecommunications carriers, as the FCC has not yet issued any rules regarding wireless carriers.

As noted above, the FTC has urged the FCC to issue stronger regulations, including a mandate that telephone companies offer consumers the option of blocking all third parties from adding charges to their telephone bills. Consumer advocates also have promoted an opt-in approach, which would go further to require telephone companies to block third-party charges unless consumers opt-in, or approve, the charges. The FCC decided, however, that such specific blocking requirements would be premature, noting that some carriers had started to offer blocking on their own.[67] Furthermore, the FCC limited the disclosure requirement to carriers that already offer blocking options, in order to minimize compliance burdens on small carriers and increased costs of disclosures. It continues to hope that the industry will police itself and appears unlikely to shift to a more aggressive approach.[68]

Nonetheless, litigation continues regarding cramming claims. For example, a consumer class action filed in 2009 is finally coming to close[69] against Verizon alleging that it allowed third parties to cram unauthorized charges into its customers' phone bills through its third-party billing system. After years of litigation and settlement discussions, the final settlement approval hearing was on July 9, 2013, but no order has been entered as of the date of this article.[70] The proposed settlement will require Verizon to offer third-party bill blocking to its customers and allow class members to either opt for a standardized $40 "flat payment claim" or submit a "full payment claim" for itemized damages, which Verizon, the third-party biller, or the billing aggregators may challenge.[71]

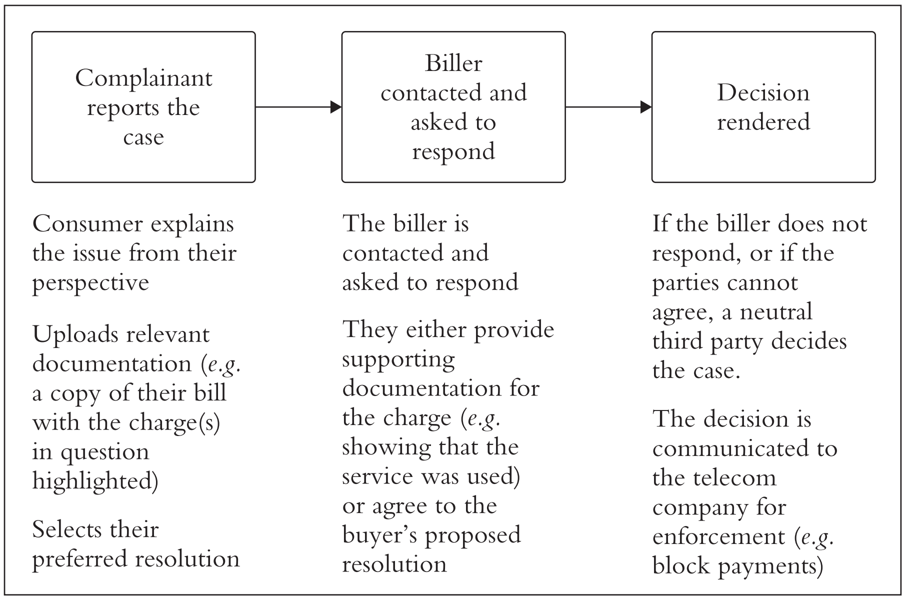
Still, the controversy over the Verizon settlement highlights regulators' continued struggles. The FTC filed an *Amicus Curiae* brief in the case raising its concerns about the settlement terms, the notice provided to potential class members, the ineffectiveness of the injunctive relief, and the amount of attorney's fees requested in the case.[72] The DOJ also submitted its concerns to the court regarding insufficient notice provided to potential class members.[73] Both the DOJ and the FTC have nonetheless now dropped objections as moot or addressed in the amended settlement.[74] They were appeased by changes to the settlement requiring those who contest class claims to submit affidavits of good faith, eliminating the third-party crammers from those released, and adding a provision stating that the release did not cover "law enforcement actions, regulatory proceedings, or other actions by the government."[75]

At the same time, the FTC brought suit in 2012 to shut down a $70 million cramming operation run by American eVoice, Ltd. and others.[76] This was after hundreds of consumers complained about charges ranging from $9.95 to $24.95 per month appearing on their phone bills without their authorization. The third-party billers and billing aggregators alleged that the consumers had authorized the charges by filling out forms on the Internet. There was no proof of this authorization, however, which left consumers with no remedy in many cases. The crammers even went so far as to funnel their illegal cramming operations to a purported nonprofit organization controlled by one of the named defendants in the case. The offices of the BBB in several states as well as the FCC also became involved in the investigation in light of the operation's magnitude.

Conclusion and Call for ODR to Address Cramming Claims

Cramming is problematic for all involved. It places companies at risk of being sued, fined, or otherwise disciplined by federal and state regulators.[77] It also creates costs for the regulators, and thus the consumers who ultimately shoulder these costs.[78] Moreover, it leaves victims with little to no recourse because of the lack of clear regulations or claims resolution mechanisms, and the finger pointing by the various parties involved. Accordingly, cramming presents a problem that is ripe for creation of an ODR system, and thus provides a laboratory for applying some of the various ideas noted above for consideration in crafting dispute resolution processes to address consumer claims in general.

The accompanying diagram illustrates an example of one approach for resolving cramming claims. Various processes could be beneficial, and this is put forth as only one possibility for an online resolution process for efficiently and fairly resolving consumers' complaints regarding third-party charges on their telephone bills. It is designed to be cost-effective, quick, and easy-to-understand.[79] It would proceed as follows:



- Independent dispute resolvers who are trained in the issues around cramming would facilitate any online mediations and arbitrations.
- Only consumers would be eligible to file cases, which would boost consumers' trust in the process as well as goodwill for the companies that adopt the program.
- Telephone companies that issue the bills with the third-party charges would enforce the decisions rendered by providing refunds to their customers and blocking future charges from the third-party billers in question.
- The telephone companies could then seek reimbursement from the billers by withholding billings or otherwise asserting their rights.
- The online process also would provide an additional portal for reporting fraudulent practices to the FCC, FTC, and relevant state regulators. This would include a "trigger mechanism" which would alert the FTC, FCC, and other state regulators when the number of proven complaints against a particular third-party biller reaches a certain level, defined as a number or a percentage based on the number of complaints filed. This would assist federal and state regulators in deciding what enforcement actions to pursue with their limited resources.
- The online platform and efficient process will keep costs low, and could be covered by relatively small contributions from the telephone companies. Furthermore, registration and trustmark systems (as proposed above) could eventually cover these costs and handle administrative duties.

Again, this is only one skeletal proposal in a vast sea of possibilities. Further research and development are essential, and any process must be contextualized to address needs of all involved: Consumers, companies and regulators. It is time for proactive and positive discussions to provide cost-effective, convenient, and fair means for resolving cramming disputes. Moreover, cramming cases provide just one area in which ODR could help create access to consumer remedies. Indeed, this article hopes to spark further collaborations and discussions to create effective and satisfying ODR processes for a wide range of consumer claims.

Notes

1. *See* Amy J. Schmitz, "Access to Consumer Remedies in the Squeaky Wheel System," 39 *Pepperdine L. Rev*. 279–366 (2012). Arthur Best & Alan R. Andreasen, "Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress," 11 *Law & Soc'y Rev.* 701, 702 (1977) (noting that sellers choose to use "less stringent quality control practices" and simply compensate those that complain about defective products).
2. *See* R. Ted Cruz & Jeffrey J. Hinck, "Not My Brother's Keeper: The Inability of an Informed Minority to Correct for Imperfect Information," 47 *Hastings L.J.* 635, 647–50 (1996) (explaining and questioning the informed minority argument); Lee Goldman, "My Way and the Highway: The Law and Economics of Choice of Forum Clauses in Consumer Form Contracts," 86 *Nw. U. L. Rev.* 700, 714–16 (1992) (explaining the informed minority argument through a discussion of the "marginal set of informed consumers").

3. *See, e.g.*, Cruz & Hinck, n.2 *supra*, 672–676 (discussing how sellers differentiate among buyers by providing contract changes and adjustments to only the most sophisticated consumers who complain).
4. Amy J. Schmitz, "'Drive-Thru' Arbitration in the Digital Age: Empowering Consumers through Regulated ODR," 62 *Baylor L. Rev.* 178-244 (2010).
5. This article draws significantly from Amy J. Schmitz, "Ensuring Remedies to Cure Cramming," 14 *Cardozo J. Conflict Resolution* 877-897 (2013).
6. FTC Reply Comment Before the Federal Communications Commission Concerning Placement of Unauthorized Charges on Wireless Bills, Otherwise Known as "Cramming," CG Docket Nos. 11-116, 09-158, and 98-170 (July 2012) (P104403).
7. State Attorneys General Comment Letter on Cramming, at 2-11 (June 24, 2013), available at *http://www.naag.org/assets/files/pdf/signons/Final%20FTC%20Comment%20Mobile%20Cramming.pdf.*
8. *See* n.6, *supra*.
9. *Id.*
10. *Id.*
11. *See generally* Nicole Gabrielle Kravec, "Dogmas of Online Dispute Resolution," 38 *U. Tol. L. Rev*. 125, 125–127 (2009) ("the great paradox of online mediation is that it imposes an electronic distance on the parties . . . .").
12. *See* Haitham A. Haloush & Bashar H. Malkawi, "Internet Characteristics and Online Alternative Dispute Resolution," 13 *Harv. Negot. L. Rev.* 327, 327–329 (2008) (discussing efficiency benefits of ODR).
13. ABA Task Force on Elec. Commerce & Alt. Dispute Resolution, "Addressing Disputes in Electronic Commerce: Final Recommendations and Report," 58 *Bus. Law.* 415, 419 (2002) (broadly defining ODR).
14. *See* Ethan Katsh & Leah Wing, "Ten Years of Online Dispute Resolution (ODR): Looking at the Past and Constructing the Future," 38 *U. Tol. L. Rev.* 19, 19–31 (2006) (discussing benefits of ODR); Philippe Gilliéron, "From Face-to-Face to Screen-to-Screen: Real Hope or True Fallacy?" 23 *Ohio St. J. Disp. Resol.* 301, 302 (2008) (noting use for consumer small claims).
15. FTC, "Public Workshop: Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace," 65 *Fed. Reg.* 7831 (Feb. 16, 2000); FTC, "Public Roundtable on Dispute Resolution for Online Business-to-Consumer Contracts" (2001), available at *http://www.ftc.gov/os/2001/01/cbadrfrn.htm* (last visited Dec. 29, 2012).
16. *See* Katsh & Wing, n.14, *supra* (explaining ODR's evolution).
17. *See* Gilliéron, n.14, *supra* (explaining benefits of ODR).
18. *See* Debi Miller-Moore & Maryann Jennings, "At the Forefront of ODR: Recent Developments at the AAA," 62 *Disp. Resol. J.* 35, 36–38 (2007) (discussing various uses of the Internet by the American Arbitration Association (AAA), including its partnership with Cybersettle).
19. Referring to binding online arbitration as "OArb" for ease of reference and to distinguish it from nonbinding ODR methods. *See* Schmitz, n.4, *supra*, at 240–243 (2010) (discussing how online arbitration ("OArb") opens new avenues for consumers to obtain remedies on their contract complaints).
20. *See* Schmitz, n.4, *supra,* at 240–243 (2010).
21. *Id.* at 180.
22. *See generally* Michael Moffitt, "Three Things to Be Against ('Settlement' Not Included)," 78 *Fordham L. Rev.* 1203 (2009) (discussing the roles of litigation and ADR in the dispute resolution landscape).
23. *See* Schmitz, n.20, *supra*.
24. *See* Amy J. Schmitz, "Access to Consumer Remedies in the Squeaky Wheel System*,*" 39 *Pepp. L. Rev.* 279 (2012).
25. Ethan Katsh & Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace,* 74–92 (2001) (providing early materials on ODR).
26. *See* Gilliéron, n.17, *supra,* at 321–324 (addressing ODR's lack of location connections and tendency to rely on general principles).
27. *See* Thomas Schultz, "Does Online Dispute Resolution Need Governmental Intervention? The Case for Architectures of Control and Trust," 6 *N.C. J. L. & Tech.* 71, 89–93 (2004).
28. Government-provided dispute resolution services can be very effective and help consumers obtain remedies through a trusted system. *See, e.g.*, Daniel Schwarcz, "Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict," 83 *Tul. L. Rev.* 735, 742–750, 783–785, 803–804 (2009) (discussing government programs for resolving consumers' financial services claims).
29. *See* Mazera v. Varsity Ford Mgmt. Servs., 565 F.3d 997, 1004 (6th Cir. 2009) (highlighting how up-front payment of arbitration fees can chill consumer claims).
30. Alice F. Stuhlmacher, *et al.*, "Gender Difference in Virtual Negotiation: Theory and Research," 57 *Sex Roles* 329, 334-336. (2007).
31. *See* Stuhlmacher, *et al.*, n.30, *supra,* at 334-337 (discussing study results showing that women were significantly more hostile in virtual than in F2F negotiations).
32. *See* Stuhlmacher, *et al.*, n.30, *supra,* at 332-336 (discussing the study and findings).
33. *See* James P. George, "Access to Justice, Costs, and Legal Aid," 54 *Am. J. Comp. L.* 293, 300 (2006) (noting that delays in the litigation process, particularly case backlogs, are a criticism of litigation).
34. Unlike judges, arbitrators generally only decide disputes part-time or "on the side," and are often very busy with their own legal practices.
35. *See, e.g.*, NCH Software, *http://www.nch.com.au/express/index.html* (last visited Dec. 26, 2009).
36. *See, e.g.*, Kwintessential Foreign Language Translation and Transcription Service, *http://www.kwintessential.co.uk/translation/transcription.html* (last visited Feb. 9, 2013).

37. Zev J. Eigen, "When and Why Individuals Obey Contracts: Experimental Evidence of Consent, Compliance, Promise, and Performance," 41 *J. Legal Stud.* 67, 67-73 (2012).

38. *Id.* at 69-73 (also noting that individuals were even more likely to perform in cases in which there was an undesirable task involved).

39. *Id.* at 73-80.

40. *See* Katsh & Rifkin, n.25, *supra,* at 88.

41. *See* Yeon-Koo Che & Albert H. Choi, "Shrink-Wraps: Who Should Bear the Cost of Communicating Mass-Market Contract Terms?" *John M. Olin L. & Econ. Res. Paper Series,* Paper No. 2009–15, 1–4 (2009), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1384682##* (proposing enforcement of disclosure ("duty to speak") by requiring an easy-to-read format for disclosure or imposing buyer-friendly terms on sellers who fail to provide sufficient disclosures).

42. Zev J. Eigen, "Experimental Evidence of the Relationship between Reading the Fine Print and Performance of Form-Contract Terms," 168 *J. Inst. & Theoretical Econ.* 124, 124-138 (2012).

43. *See* Eigen, n.42, *supra*, at 130-138.

44. *See* Eigen, n.42, *supra*.

45. The Electronic Courthouse, "How it Works," *http://www.electroniccourthouse.com/how_it_works_page1.php* (last visited Feb. 14, 2013) (taking parties through the steps of agreeing to use online arbitration to obtain a final and binding decision).

46. *See* Robert A. Hillman, "Online Boilerplate: Would Mandatory Website Disclosure of E-standard Terms Backfire?" 104 *Mich. L. Rev.* 837, 838, 845–849 (2006).

47. In addition, some providers may use random arbitrator assignments to enhance independence. *See* Julia Hornle, *Cross-Border Internet Dispute Resolution* 239–242 (2009) (discussing the importance of provider and arbitrator neutrality in ODR).

48. David Cho & Michael D. Shear, "Obama Presents Bill to Create Consumer Finance Watchdog," *Wash. Post*, (Jul. 1, 2009), available at *http://www.washingtonpost.com/wp-dyn/content/article/2009/06/30/AR2009063004187.html* (last visited March 6, 2013) (discussing the proposal and lobbying efforts that have already begun).

49. This should add little expense or complication since this information should already be online due to the nature of the online arbitration process.

50. *Code of Business Practices (BBB Accreditation Standards*), (Jan. 14, 2010), *http://www.bbb.org/us/bbb-accreditation-standards* (requiring companies seeking the BBB seal to respond to consumer claims and seek to resolve those claims without litigation).

51. *Id.*

52. BBB, Description and Rules (For All States Except California), available at *http://www.bbb.org/us/auto-line/us-process/#thirtythree* (last visited March 6, 2013).

53. One consumer interviewed in producing a consumer outreach film noted how a company sent a scholarship application to a university email list, and simply asked for name, address, and cellular phone number. After that, charges suddenly appeared on his regular phone bill with a major carrier and were ostensibly pursuant to hidden terms in the application. Email from Richard Emil Masana, University of Colorado at Boulder (June 1, 2010, 10:12 MST) (on file with author).

54. "Unauthorized Charges On Telephone Bills: Why Crammers Win and Consumers Lose," Before the Comm. on Commerce, Sci., and Transp., 112th Cong. 1 (2011) (statement of Sen. John D. Rockefeller IV, Chairman, Comm. on Commerce, Sci., and Transp.).

55. *Id.*

56. FTC Reply Comment Before the Federal Communications Commission Concerning Placement of Unauthorized Charges on Wireless Bills, Otherwise Known as "Cramming," CG Docket Nos. 11-116, 09-158, and 98-170 (July 2012) (P104403).

57. *Id.*

58. *Id.*

59. *Id.*

60. *See* Mark E. Budnitz, "Mobile Financial Services: The Need for a Comprehensive Consumer Protection Law," 27 *Banking & Fin. L. Rev*. 213, 213-229 (2012) (noting challenges and proposing a model law).

61. "Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges ('Cramming'); Consumer Information and Disclosure; Truth-in-Billing Format," 77 Fed. Reg. 30915 (May 24, 2012) (to be codified at 47 C.F.R. pt. 64).

62. *Id.*

63. *Id.*; *see also* Consumer Information and Disclosure; Truth-in-Billing and Billing Format, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42, at 21 (Apr. 27, 2012).

64. *See* n.61, *supra* (stating "[c]arriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from carrier charges."). The rule also requires wireline carriers to provide separate totals for carrier and noncarrier charges. *See also* Consumer Information and Disclosure; Truth-in-Billing and Billing Format, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42, at 21 (Apr. 27, 2012).

65. *See* n.61, *supra*.

66. Consumer Information and Disclosure; Truth-in-Billing and Billing Format, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42, at 21 (Apr. 27, 2012). Carriers are required to make disclosures about blocking options on their websites and at the point-of-sale 15 days after notice of OMB approval, and are required to make changes to their billing systems within 60 days after publication in the Federal Register of a notice that OMB approval has been obtained.

67. Consumer Information and Disclosure; Truth-in-Billing and Billing Format, CG Docket Nos. 11-116 and 09-158,

CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42, at 20-59 (Apr. 27, 2012).

68. *Id.* at 61-63.

69. Moore v. Verizon Communications, Inc., *et al.*, 2009 WL 3453958 (N.D.Cal.) (Amended Complaint).

70. As of July 28, 2013.

71. Settlement Agreement at *https://www.verizonthirdpartybilling-settlement.com/(S(uvqrxts0cnjheys1qa00hfw4))/default.aspx* (also noting that only class members notified in April 2013 may still able to file claims, but many of the deadlines have passed).

72. Moore v. Verizon Communications, Inc., *et al.*, 2012 WL 3553755 (N.D.Cal.), available at *http://www.ftc.gov/os/2012/08/120817mooreverizonamicusbrief.pdf.*

73. United States' Notice of Position Regarding Revised Settlement –CV-09-1823 SBA, available at *https://www.verizonthirdpartybillingsettlement.com/(S(vsbx4kwfdgufaehmylwcdlr0))/Documents/DOJ%20Notice%20of%20Position.pdf* The FTC had objected with respect to the method for notifying potential class members, provisions that could have prevented government entities from seeking consumer restitution against billing aggregators and crammers, and terms that would have allowed aggregators and crammers to use fraudulent documents to obstruct the claims process.

74. Stipulation regarding FTC and DOJ Filings Regarding the Settlement. *https://www.verizonthirdpartybillingsettlement.com/(S(p3dxn4bzznykmz1fp5cbprqx))/Documents/Stipulation%20of%20Amending%20Settlement%20Agreement.pdf.*

75. FTC Notice Regarding Final Approval Hearing, available at *https://www.verizonthirdpartybillingsettlement.com/(S(p3dxn4bzznykmz1fp5cbprqx))/Documents/FTC%20Statement%20of%20Stipulation.pdf.*

76. *FTC News*, "FTC Asks Court to Shut Down $70 Million Cramming Operation," available at *www.ftc.gov/opa/2013/01/evoice.shtm.*

77. State Attorneys General Comments Re: May 8, 2012 Mobile Cramming Roundtable, June 24, 2013, at 2-13, available at *http://www.naag.org/assets/files/pdf/signons/Final%20FTC%20Comment%20Mobile%20Cramming.pdf.* The FTC has been active in suing the third-party billers, which may also have an impact on the telephone companies that allow these charges to sneak into consumers' bills. *See, e.g.,* Complaint, F.T.C. v. Wise Media, 2013 WL 1633671 (April 16, 2013, N.D. Ga.), available at *http://www.ftc.gov/os/caselist/1223182/130417wisemediacmpt.pdf.*

78. For example, the FTC has had to shoulder not only the costs of bringing suit, but also costs of answering consumer complaints regarding cramming. Transcript of FTC Mobile Cramming Twitter Chat, April 17, 2013, available at *http://www.ftc.gov/opa/socialmedia/twitterchats/130417mobilecramming.pdf.*

79. Special thanks to Mr. Colin Rule at Modria (a Silicon Valley company that designs and provides ODR and Online arbitration processes), who has vast experience in ODR software development and has been an excellent collaborator in creating this design.