Overview

Time was when highly polished promises and artful guarantees were all the tools fraud operators needed to separate consumers and businesses from their money. Now, some scam artists are using new, more devious tactics to fleece consumers — and they're hiding behind the familiar face of a telephone bill to do it.

Indeed, some con artists have found the telephone billing and collection system to be a fertile area to defraud consumers. Taking advantage of changes in the telecommunications industry that began 15 years ago with the break-up of AT&T, these stealth 'operators' are arranging to put charges on a consumer's phone bill for services that were never ordered, authorized, received, or used. The practice is called cramming, and it appears to be happening in dramatic fashion.

In only 18 months, cramming has climbed to the number five spot among the categories that generate the most complaints received by the Federal Trade Commission's Consumer Response Center. In fact, since October 1997, the FTC has received more than 10,000 complaints about cramming. This report tells the story of the FTC's response to cramming: how it occurs, the agency's enforcement actions, federal/state activities, proposed changes to the agency's 900-Number (Pay-Per-Call) Rule, and activities to educate consumers.

Cramming, although significant, represents only one challenge in the FTC's campaign against fraud during 1998. Last year, the FTC filed 83 cases and orchestrated 16 major "sweeps" with law enforcement partners in other federal agencies and the states.

The FTC filed 68 cases as part of the sweeps: 21 cases dealt with credit repair fraud (Operation Eraser);13 with franchise and business opportunity scams (Operation Money Pit; Net Opp; Project House Call; and Vend Up Broke); and eight with violations of the Telemarketing Sales Rule (Operation Loan Shark; Foreign Lottery Tickets). Seven cases dealt with advance-fee credit card scams (SureCheck); five with deceptive telephone fund-raising schemes (Operation Missed Giving); four with fraudulent investment opportunities (Risky Business); four with the deceptive marketing of government auctions (Operation Auction Guides); three with fraudulent Spanish language healthcare advertising (Campana Alerta II); and three with fraudulent ads for federal and postal jobs. An additional 216 state and federal actions were brought as part of these sweeps.

Fifteen "stand-alone" FTC cases involved debt consolidation loan scams;

abusive lending practices; 800/900 telephone number billing fraud; and online scams involving Internet auctions and business opportunities.

The Commission also worked to achieve greater international cooperation to combat cross-border fraud, step up criminal enforcement against those who violate FTC orders through Project Scofflaw, and broaden its education programs for consumers and businesses through cooperative efforts with industry organizations, the media, and consumer groups. Many of these law enforcement and education efforts highlight the FTC's close working relationship with state Attorneys General. In addition to the state Attorneys General, the FTC worked with Federal agencies including the FBI (Operation Cold Call), U.S. Postal Inspection Service (Bandit in the Mailbox; Stamp Out Job Fraud), and the Internal Revenue Service and the Securities and Exchange Commission (Project Risky Business). The Commission obtained millions of dollars in consumer redress, and $52 million (including write-offs) from cramming cases alone.

There's no question that scam artists are clever: always among the first to identify, adapt and capitalize on technological advances or marketplace innovations, they created cramming — a seemingly efficient way to defraud customers by the thousands. But law enforcement officials uncovered the scam, took legal and regulatory action, and alerted consumers to read their telephone bills with increasing vigilance, question items they don't understand, and report suspicious charges.

Setting the Stage

The telephone billing and collection system was created and used exclusively by AT&T until January 1984. That's when Local Exchange Carriers (LECs) took over these activities as a result of the AT&T break-up.

Now, the telephone billing and collection system has become an alternative to credit cards, checks and other conventional billing and collection systems. While consumers may find it more convenient to be charged for more than mere telephone use through their telephone bills — Internet, cable, voice mail and "audiotext" or pay-per-call services such as horoscopes, sports information, and "adult" chat lines — recent experiences show that the newly-available access to the LEC billing and collection system may be causing significant abuses. LEC billing for vendors has created opportunities to abuse the system. Cramming

demonstrates that the telephone billing and collection system has yet to develop the kind of effective mechanisms for risk assessment and fraud prevention that characterize other billing and collection systems.

The bottom line: what consumers don't know about today's telephone billing and collection system can hurt them financially. Only a few years ago, most consumers would not have considered the possibility that they might be charged for anything beyond the transmission of telephone calls on their telephone bills. Now, the injury caused by cramming has been a rude wake-up call for consumers, and may undermine confidence in the integrity of the billing system.

How Cramming Occurs

Like legitimate providers, crammers use a telephone number as the basis for billing. Unlike legitimate providers, however, crammers don't care whether the consumer agrees to buy the goods or services being sold. They simply use the phone number to place charges on a consumer's phone bill.

Crammers use a variety of ruses to get numbers. Some use bogus sweepstakes entry forms, while others apparently select numbers at random from the telephone book. Still others are more high-tech. They use deceptive ads to entice consumers to call a toll-free number. Then they use Automatic Number Identification (ANI) — a system similar to "Caller ID" — to capture the telephone number from which the call is placed. But ANI identifies only the telephone number and the person responsible for that number — the line subscriber. ANI cannot tell whether the person placing a call is, in fact, the line subscriber.

> "I noticed charges . . . on my telephone bill . . . when I contacted the company to ask what the charge was, they directed me to another company which informed me that I had applied for a calling card and signed an application . . . I do not recall applying for any calling cards . . . ."
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> *Consumer complaint to the FTC, March 17, 1999*

Once a crammer has "captured" a line subscriber's phone number, it is a relatively simple matter for him to use it as a means to insert charges on the subscriber's phone bill. The crammer uses the services of a "billing aggregator" — one of several companies that serve as intermediaries between service vendors (both legitimate and cram-

mers) and the LECs. The billing aggregator receives billing data, based on phone numbers, from many service vendors (including crammers). The billing aggregator processes this data into the appropriate electronic format, and forwards it to the LECs, which then use the data in preparing subscribers' phone bills. The result is a page in the subscriber's phone bill containing the crammer's charges. These charges often are recurring monthly charges for memberships in, for example, psychic, personal or travel clubs. Sometimes, the charges are disguised as a telephone service like voice mail, paging or calling cards.

The problem is that the line subscriber is billed for the services when he or she has never placed a call or otherwise authorized charges to be billed to his or her telephone line. In cases where crammed charges arise from a telephone call, anyone with access to a line subscriber's phone may have placed the call without the subscriber's knowledge or consent. Many crammed charges arise from calls to toll-free numbers. Since line subscribers cannot block calls to toll-free numbers, they may incur unauthorized charges that arise from calls placed by someone who is using their telephone without permission to incur charges on his or her line.

> "We changed our number three times and now there is trouble again . . . . A woman in Milwaukee gets our number and charges calls to us . . . . Can you help us with this problem?"
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> *Consumer complaint to the FTC, December 9, 1998*

Getting the Job Done

The FTC uses a multifaceted approach to combat fraud of all kinds, including cramming. First, through its systematic collection and analysis of consumer complaint data, the agency spots emerging consumer issues and identifies bad actors. With data in hand, Commission staff investigate and identify appropriate targets for law enforcement action. With Commission approval, staff then file actions in federal district courts across the country, seeking and obtaining temporary restraining orders, preliminary injunctions, permanent injunctions and other equitable relief — such as asset freezes and the appointment of receivers — to stop unfair or deceptive practices and to preserve assets for consumer redress.

In addition to litigation, the Commission engages in rulemaking proceedings and consumer and business education. Indeed, consumer and/or business educa-

tion initiatives complement virtually all law enforcement efforts. To leverage resources and maximize outreach, Commission staff seek partnerships with private industry, consumer groups and other government agencies.

Federal Law Enforcement Actions

The Commission has filed five major cramming cases. In the most significant case to date, the Commission again took action against defendants sued in the agency's first 900-Number (Pay-Per-Call) Rule case — American TelNet, Inc. The four other actions targeted both vendors of services and "billing aggregators" — those who opened the gates to the telephone billing and collection system for vendors.

FTC v. American TelNet, Inc. is the Commission's most recent case, but the second time the FTC has targeted one of the country's largest providers of pay-per-call services with enforcement action. In 1994, ATN and its principals were defendants in the Commission's first 900-Number Rule case, settled through a Consent Decree that required forgiveness of $2 million in unpaid audiotext service charges against consumers and payment of $500,000 in civil penalties.

The current case was prompted by the Commission's receipt of consumer complaints about abuses within ATN's telephone billing and collection system. During its investigation, the FTC found that tens of thousands of consumers complained to ATN about charges on their telephone bills for "adult entertainment" and "psychic line" services. Analysis of the complaints revealed that a significant percentage of these consumers had reliable evidence that the calls could not have been made from their telephones. An even greater percentage of consumers had no documentation, but nevertheless asserted that they neither ordered nor authorized the audiotext services for which they had been charged.

ATN billed its customers on the basis of ANI — a system that is susceptible to technological or human errors, as well as tampering and fraud by third parties. For example, when a third party clips onto a consumer's telephone line outside the home — a practice know as "phreaking" — or intercepts the line by hacking into the phone company's computer, an ANI record is created that shows a call from a consumer's number, even though the consumer did not use his telephone to make the call. The FTC found that despite the fallibility of ANI, and consumer complaints and documentation, ATN repeatedly would bill consumers after they had

notified the company of a billing error, claim they had a legal obligation to pay, fail to investigate their assertions of error, and threaten them with legal action and negative credit reports.

The FTC's recent complaint charged ATN with the following false claims: that its audiotext services were accessed from consumers' telephone, and therefore those consumers were legally obligated to pay for the service; that a reasonable basis existed for making these claims in the course of ATN's collection efforts; and that ATN would report negative information to credit reporting agencies or file lawsuits against consumers if they didn't pay the charges. ATN also failed to tell consumers about the cost of audiotext services accessed by dialing international telephone numbers.

> "A person called and identified themselves as my local phone company . . . . In November a charge showed up on my phone bill . . . . After talking with my phone company, they advised me I had been crammed . . . I called and told them to cancel . . . . February the charge showed up again . . . . April bill still has charges . . . ."
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> *Consumer complaint to the FTC, April 15, 1999*

The complaint also charged that ATN's billing practices violated the 900-Number Rule, which prohibits the continued billing of a consumer, after notification of a billing error, without correcting the error or conducting a reasonable investigation in which the consumer is given an opportunity to dispute the charges. ATN was charged with: charging consumers for audiotext services accessed by dialing an 800 or other toll-free numbers without a presubscription agreement; charging consumers for the preamble disclosures; and failing to display cost information clearly and conspicuously in its advertising. These practices also violated the 1994 Consent Decree.

The current consent order provides strong injunctive relief that will substantially improve the company's dispute-handling procedures. It also provides for $39 million in consumer redress: $2 million in cash and $37 million in written-off charges against consumers' phone bills.

FTC v. Interactive Audiotext Services, Inc., the Commission's first cramming case, was filed in April 1998. The agency's complaint alleged that in many instances, the defendants billed the line subscriber, rather than the person who actually purchased the services. According to the complaint, when consumers

called the company's 800 numbers, they heard a recorded message offering an opportunity to purchase audiotext services by having the charges for the services billed to their credit or debit card account, having their checking account debited, or having the company bill them directly. The company used ANI to identify the telephone number from which the call was placed. With this information, the company could identify the name and address of the person who owned the telephone number.

The FTC alleged that the party billed for the audiotext services was the line subscriber, not the party who purchased and received the audiotext services. Because consumers cannot block access to toll-free numbers from their telephone lines, the FTC said these consumers could not reasonably avoid charges for service purchases made by someone else using their phones.

In addition, in some cases, when consumers called an 800 or 900 number, a recording told them to call a phone number that began with "011" or a "500." According to the complaint, these recordings did not disclose that by dialing these numbers, callers were accessing the audiotext services through an international long distance call — often at a cost of more than $4 per minute.

The complaint also charged the defendants with two violations of the 900-Number Rule, which the FTC enforces: charging for audiotext services accessed through a call to an 800 number when the caller doesn't have a valid pre-subscription contract with the company before calling for the services; and connecting callers directly to live chat lines without providing certain preamble disclosures.

In December 1998, the defendants agreed to pay up to $13 million in consumer redress to settle the charges. The defendants likely will pay $4 million in redress and forgive another $9 million in unpaid charges to consumers.

International Telemedia Associates, Inc., initiated in July 1998, targeted a "billing aggregator" — International Telemedia Associates, Inc. — and its client vendor — Online Consulting Group, Inc., which sold audio equipment. The Commission was able to obtain an *ex parte* temporary restraining order (TRO) against ITA and Online, and an asset freeze and temporary receiver against Online. Both defendants stipulated to a preliminary injunction that maintains the relief provided by the TRO. ITA is in bankruptcy, and the litigation continues.

The facts, as alleged by the Commission, describe a twist on a now-familiar cramming scenario. Online placed a toll-free number in an ad in newspapers

throughout the country for "free matching" services with "local singles." When consumers called Online at the toll-free number, they were asked where they were calling from and what sort of person they wanted to meet, and were told that Online would have a "local single" return the call. Online then hung up, and consumers later received calls from purported "local singles."

> "I am calling on behalf of my elderly mother who is being billed for unauthorized (telephone) services . . . . The company says the service was authorized by her husband . . . (Her) husband has been dead since January 1992."
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> *Consumer complaint to the FTC, December 22, 1998*

The problem? Online didn't adequately disclose two key items in the first call or during any of the return calls: that there would be a return call for which the consumer would be charged, or the amount of the charge. As a result, consumers reported shock at finding charges – described as collect or direct calls from a number in Florida – billed to their telephone numbers at the exorbitant rate of $4 per minute. Many consumers also were charged hundreds of dollars on their phone bills for Online's audio entertainment service, which was delivered through return calls.

ITA, the billing aggregator, allegedly played a key role in enabling Online to surprise consumers. Online gave ITA the billing information it generated from consumer calls to Online's toll-free numbers. ITA forwarded the billing information to the LECs to be included on consumers' phone bills. Online used ANI equipment to generate the billing data.

FTC v. Hold Billing Services, Ltd. Hold Billing Services, Ltd. is a billing aggregator that served Veterans of America Association, Inc. (VOAA), a service vendor. VOAA, also a defendant, allegedly induced consumers to enter a purported sweepstakes without adequately disclosing that a completed entry form was considered authorization to bill a package of services to the telephone number consumers provided. Hold processed the billing data VOAA got from the entry forms into the electronic format required by the LECs, then forwarded the information to the LECs so that the charges for VOAA's package of services could be put (or crammed) onto line subscribers' telephone bills. Hold also acted as a conduit to VOAA for revenues collected from consumers by the LECs.

The FTC alleged that Hold and VOAA engaged in three unfair or deceptive

practices. First, VOAA failed to disclose that it construed sweepstakes entries as authorization to charge consumers for its services. Second, VOAA and Hold falsely represented on consumers' telephone bills that consumers were legally obligated to pay for VOAA's services, even if they did not purchase them, just because their phone numbers appeared on entry forms. Finally, VOAA and Hold unfairly billed line subscribers for services on their telephone bills solely on the basis of sweepstakes entry forms submitted by third parties.

"... November 1997 ... (I) requested my phone number be changed, unlisted, and (commercial calls) blocked ... because I am physically limited .... Since that time I have received monthly charges from (company name) ... I never ordered any service from them .... I have been fighting this for 10 months. Please do something about it!"

Consumer complaint to the FTC, September 24, 1998

On August 24, 1998, the court entered stipulated preliminary injunctions against Hold and VOAA that prohibited the unlawful practices alleged in the Commission's complaint. The litigation continues.

In ***FTC v. Crown Communications***, filed in December 1998, the Commission sued Crown Communications, its affiliates and three corporate officers for cramming charges for telephone entertainment services onto the telephone bills of consumers who had not ordered the services. According to the complaint, Crown misled consumers by telling them that they were legally obligated to pay for their audiotext services, despite the fact that the consumers might never have authorized the purchases.

The complaint also alleged that when Crown billed consumers for the services, the company misrepresented the charge on the phone bill by saying it was for a regular or collect long distance phone call. Consumers who got the bills had no way to know that the charges actually were for a telephone entertainment service. Many consumers also received and paid bills from Crown that included charges for long distance or collect calls that they neither placed nor received.

Crown used a variety of ways to cram charges on consumers' phone bills. For example, Crown solicited consumers to call adult chat lines to "get matched free" with "local singles." When the consumers called the advertised 800-number for Crown's service, a recording instructed them to hang up and wait for a return call.

Soon after, the consumer received a call from someone claiming to be a "local single." Crown charged consumers on their phone bills for calls described as collect from England or Florida or direct dial to Toronto, Canada.

Crown allegedly used ANI to identify and record the telephone numbers from which calls to its audiotext services were placed. Crown used the number ANI captured to generate billing information, then forwarded it to billing aggregators who, in turn, processed the data and passed it on to the line subscriber's local telephone company. The local phone company then included Crown's charges on the consumer's monthly telephone bill.

The pattern of alleged unlawful conduct targeted in the five cases of 1998 is by no means unique. A number of other billing aggregators and service vendors currently are under investigation.

State Law Enforcement Actions

The Commission has a close working relationship with the states. Each month, Commission staff participate in conference calls with assistant state attorneys general on telecommunications issues. Staff share information about technology, new and emerging schemes, potential targets of enforcement actions, strategies for law enforcement, and the impact of new state and federal laws as they relate to the telecommunications area. The Commission's cases against ITA, Hold, Crown and several non-public investigations were advanced significantly by these discussions. In addition, Commission staff have assisted a number of states on their cases.

Attorneys General in at least 10 states – Idaho, Illinois, Kansas, New Jersey, New York, Missouri, Ohio, Pennsylvania, Virginia, and Wisconsin – have undertaken more than 20 law enforcement actions against crammers, with Illinois bringing 11 of these cases. While most of the matters are still pending, the Illinois case against Telecommunications Resources, Inc. (TRI) was resolved through a consent decree with injunctive relief, $20,000 in penalties, and $500,000 in restitution. Virginia also entered into a consent order with TRI calling for injunctive relief, $15,000 in penalties and costs, and $435,000 in restitution.

Other resolved cramming cases include:

- New York's cases against Veterans of America Association and associated companies, which resulted in an order requiring a $100,000 performance

bond to do business in New York and payments of $69,000 in penalties and costs.

- New York's case against Pantel Communications, resolved through a consent agreement, which imposed injunctions and required payment of $50,000 in costs and $67,000 in restitution.
- Wisconsin's action against Quest Communications Corp., which resulted in a final judgment awarding injunctive relief, $25,000 in penalties and costs and $40,000 in restitution.
- Kansas' assurance of voluntary compliance with RRV Enterprises, which called for $35,000 in penalties and costs and full refunds for Kansas consumers.

Consumer Education

Believing that the most effective consumer protection is education, the FTC tries to alert as many consumers as possible to the telltale signs of fraud. The agency's information dissemination program is vital to its mission. Staff enlist a panoply of "partners" — other federal agencies, state and local consumer protection agencies, trade associations, professional organizations, volunteer groups, corporations, Better Business Bureaus, the military, and extension agencies, for example — and use a variety of media — newspapers, classified ads, public service announcements, bus placards, the Internet, brochures, bookmarks, and puzzles — to get their consumer messages across.

In response to mounting evidence of consumer confusion about the explosion in telecommunication choices in the marketplace, the Commission sponsored a public workshop in March 1997. At issue was how to assist consumers to make informed decisions about new products, services and billing methods. Participants included representatives from the LECs, long distance carriers, consumer groups, industry coalitions, the Federal Communications Commission and the National Association of Attorneys General.

First, a working group got together to develop *It's Your Call: Shopping in the New Telecommunications Marketplace.* Released in January 1998, this brochure describes the charges a consumer is likely to encounter when shopping for telephone services and tells how to compare prices and services. It also cautions about potentially deceptive sales techniques.

Second, in response to the sudden influx of consumer complaints about cramming in early 1998, the Commission prepared *Cramming: Mystery Phone Charges*. This brochure explains the practice, how crooks get consumers' phone numbers and cram charges on phone bills, and how consumers can minimize their vulnerability to cramming scams — or avoid them altogether.

> ". . . we received our phone bill with several '900' phone calls on it. These calls were not made by anyone in our household and we immediately called (local phone company name) and they agreed to remove the charges . . . . We received 'dunning letter' from (unauthorized company). I called to discuss the matter . . . and was told . . . to pay up or they would turn the matter over to a collection agency."
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> *Consumer complaint to the FTC, April 15, 1998*

Like all the Commission's information for consumers and businesses, these publications are available free in print and on the Internet. To date, the Commission alone has distributed more than 70,000 copies of these publications; the pamphlets have accounted for more than 6,000 visits to the *ftc.gov* web site.

Rulemaking: FTC

With the Telecommunications Act of 1997, Congress granted the Commission very broad authority to expand the scope of the 900-Number or Pay-Per-Call Rule to address the services that are "susceptible to the unfair and deceptive practices" which prompted Congress to enact the Telephone Disclosure and Dispute Resolution Act (TDDRA).

In October 1998, the Commission published a proposed amended Rule, which would tighten the requirements that apply to providers of telephone-based audio and entertainment services, and reduce cramming by requiring all entities that put charges on a telephone line subscriber's monthly bill to have ***express authorization*** from the line subscriber to do so. The comment period closed in early March 1999, and a public forum was held in May 1999.

The Pay-Per-Call Rule enables the Commission to seek civil penalties of up to $11,000 per violation of the Rule. If amended, this Rule would prove a useful tool in fighting emerging forms of telecommunications fraud. In the meantime, the Commission continues to pursue law enforcement actions against cramming

under its existing authority under Section 5 of the FTC Act.

Parallel Tracks: The FCC's "Truth-in-Billing" Principles and Guidelines

The Federal Communications Commission recently adopted "Truth-in-Billing" principles and guidelines that will combat cramming by making it easier for consumers to read and understand their telephone bills. Consumers will know:

- who is asking them to pay for service,
- what services they are being asked to pay for, and
- where they can call to get more information about the charges appearing on their bill.

Vague or inaccurate descriptions of charges make it difficult for consumers to know exactly what they are paying for and whether they received the services that they ordered. The Commission's guidelines eliminate this confusion by requiring that bills contain full and non-misleading descriptions and a clear identification of the service provider responsible for each charge on their bill.

The FTC filed a comment supporting the FCC's principles. In addition, both agencies have sought other opportunities to share expertise. For example, the FTC hosted the first in a series of joint workshops on misleading advertising and cramming for staff of the two agencies. Future sessions will cover emerging telecommunications scams and complementary approaches the agencies might take in stopping them.

Conclusion

The Commission's strong and broad-based attack on cramming has had a measurable impact. Crammers are having a harder time plying their trade; LECs have become more vigilant when providing billing services to others; and the worst billing aggregators, like ITA, have disappeared or downsized significantly, depriving would-be crammers a portal into the LEC billing system. Still, cramming has not been eliminated altogether. The Commission's Consumer Response Center received 500 cramming complaints from consumers in December 1998 alone.

The FTC will consolidate what it knows about cramming, continue to use the tools at its disposal, and maintain and strengthen the partnerships it has formed to fight it. Finally, the agency will use every available and appropriate opportunity to remind consumers to read their phone bills carefully, question charges they

don't understand, and refer suspicious items to law enforcement agencies for prompt action.

Don't Get Crammed

Here are some tips to help consumers avoid cramming scams.

- **Be aware that your local telephone company may bill for services provided by other companies.**
- **Carefully read the fine print before you fill out contest forms, especially if they ask for your phone number.** Likewise, read the fine print before you place a call in response to a sweepstakes promotion.
- **Be cautious about calling unfamiliar 800 numbers.** Be especially wary if you're told to enter codes, leave your name, or answer "yes" to prompts. Unscrupulous entertainment providers may use this ruse to send you a bill.
- **900 numbers cost money, even if you're calling to claim a "free" prize.** All 900 numbers that cost more than $2 must give you a brief introductory message about the service, the service provider, and the cost of the call. You have three seconds after the message ends to hang up without being charged.
- **Consider a 900 number block; it stops calls from going through to 900 number services.** Blocks also are available for international, long distance, and local toll calls. Call your local phone company for details.
- **Check your phone bill every month for unfamiliar charges.** Sometimes, a call placed to a toll-free number may be fraudulently billed as a 900 number, collect call, or international call.
- **Examine your phone bill for recurring monthly charges.** These charges typically appear as "Miscellaneous Charges and Credits." They may be so small, or described in such general terms, that they're easy to overlook or to confuse with valid services you may have ordered from another provider.