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BILL NO.: **HOUSE BILL 788**
Mobile Phone Companies – Third-Party
Billing – Restrictions

COMMITTEE: **House Economic Matters**

HEARING DATE: **February 19, 2014**

SPONSORS: **Delegates Stein, et al.**

POSITION: **Support**

House Bill 788 would establish certain restrictions on third-party vendors who use the billing system of a non-affiliated mobile phone communications provider (“CMRS provider” or “mobile home provider”) to charge for its products and services. The Bill would require the CMRS provider to obtain the express authorization of the mobile phone customer before billing the third-party vendor charge to its customer, and sets out specific ways that the customer authorization can be provided. Additionally, House Bill 788 would make non-compliance with these requirements by a mobile phone provider a violation of the State Consumer Protection Act.

The “cramming,” of unauthorized charges by a third-party vendor or its billing agent on a telephone bill initially was a major problem for landline telephone

customers.¹ As the Federal Trade Commission and individual States targeted this deceptive activity and as mobile telephone use increased significantly, the “cramming” problem has migrated to mobile telephones. While unauthorized charges individually may often (but not always) be small in amount, they frequently recur on a monthly basis, and may not be noticed by the consumer on a detailed telephone bill. Unauthorized charges pose a direct harm to consumers, since it basically is taking money from consumers for products or services they did not ask for. The CMRS providers receive revenues from the third-party vendors to provide this billing service, and do not have a real interest or incentive to prevent or address unauthorized charges.

The National Association of State Utility Consumer Advocates (NASUCA), of which the Office of People's Counsel is a member², has submitted comments to the Federal Communications Commission (FCC) on telephone cramming, and most recently, on the problems with mobile phone cramming.³ Most recently, NASUCA provided testimony at the (FTC) Mobile Cramming Roundtable on May 8, 2013, which was held to examine mobile cramming practices.⁴ A majority contingent of state Attorneys General also submitted comments to the FTC as part of that Roundtable process. The comments of both NASUCA and a majority contingent of

¹ See, for example, S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” 112th Cong., 1st Sess., Committee on Commerce, Science and Transportation, United States Senate (July 31, 2011), p. 4.

² The Maryland People's Counsel was President of NASUCA from 2011 to 2013, and authorized the submission of these comments on behalf of OPC, as a member, and as an officer of NASUCA. OPC has the authority to represent the interests of residential utility customers in federal agency proceedings, pursuant to PUA, §2-205(b).

³ See, for example, NASUCA Comments submitted to the FCC on December 5, 2011 and January 13 and June 16, 2013 at www.nasuca.org.

⁴ See NASUCA Comments submitted to the FTC in Project No. P134803 on May 7, 2013 at www.nasuca.org.

States' Attorneys General in that FTC Roundtable proceeding emphasized the growing problem with mobile cramming in the past few years and the inadequate avenues for dispute resolution. Frequently, consumers complain about unauthorized charges for premium text messaging subscription services ("PSMS"), which include such things as ringtone download and alerts. The charges also include those for sweepstakes entries, horoscopes and text messages claiming prize wins.

In effect, mobile telephone cramming has become the new frontier for consumer fraud. OPC believes that consumers who rely on telephone service, whether landline or mobile telephones, are entitled to protection against illegitimate billing schemes by third-party vendors. House Bill 788 provides that protection by ensuring that the consumer must affirmatively agree to the inclusion of a third-party charge on a mobile telephone bill. Certain charges, such as those for charitable organizations and bundled or affiliated services of the mobile phone provider, are excluded from this requirement, so the focus remains on unauthorized commercial service charges. By requiring prior customer consent to these charges consumers will be protected from harm from a growing multi-billion dollar industry that relies on deception. The ability of the Attorney General to enforce these requirements under the State Consumer Protection Act puts teeth into the Bill's requirements by holding the mobile phone providers accountable for ensuring that consent is obtained for the third-party billing.

For these reasons, The Office of People's Counsel recommends a favorable report on House Bill 788.