

# Client Alert

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December 18, 2014

## CFPB Takes Action Against Carrier for Charging for Unwanted Services

By Rick Fischer, Obrea Poindexter, and Amanda Mollo

On December 17, 2014, the Consumer Financial Protection Bureau (“CFPB”) announced that it had filed a lawsuit against a telecommunications carrier, alleging that the carrier was allowing third-party merchants to place unauthorized charges on customers’ phone bills.<sup>1</sup> This is not the first time a federal regulator has taken action against similar practices; nor is it the first sign of CFPB interest in the practice. However, this lawsuit represents a major development in the mobile payments field because it is the first time the CFPB has attempted to use its authority to prohibit unfair, deceptive or abusive acts or practices (“UDAAP”) to pursue an entity based on allegations regarding these practices.

As alleged in the CFPB complaint, which was filed in the U.S. District Court for the Southern District of New York, the carrier, as a payment processor for third-party merchants, violated the Dodd-Frank Wall Street Reform and Consumer Protection Act’s prohibition on unfair practices.<sup>2</sup> Specifically, the CFPB alleged the following as unfair practices:

- Automatically enrolling customers in third-party billing, rather than requiring customers to opt in;
- Continuing to work with third-party merchants who were the subjects of lawsuits;
- Maintaining inadequate compliance and controls systems; and
- Failing to track and respond to customer complaints.

The CFPB action also focused on the proper oversight of outsourced payment processing for digital purchases to vendors called “billing aggregators.”<sup>3</sup> In its press release, the CFPB alleges that insufficient monitoring of billing aggregators may allow what the CFPB labeled “unscrupulous” merchants inappropriate access to consumers’ wireless accounts.

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<sup>1</sup> CFPB Press Release, “CFPB Sues Sprint for Cramming Consumers with Unauthorized Third-Party Charges,” Dec. 17, 2014, <http://www.consumerfinance.gov/newsroom/cfpb-sues-sprint-for-cramming-consumers-with-unauthorized-third-party-charges/>.

<sup>2</sup> Consumer Financial Protection Bureau v. Sprint Corporation, Civ. Action No. 14 CV 9931 (Dec. 17, 2014), [http://files.consumerfinance.gov/f/201412\\_cfpb\\_cfpb-v-sprint-complaint.pdf](http://files.consumerfinance.gov/f/201412_cfpb_cfpb-v-sprint-complaint.pdf).

<sup>3</sup> *Id.* at 3-4.

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CFPB Director Richard Cordray said, “Consumers ended up paying tens of millions of dollars in unauthorized charges, even though many of them had no idea that third parties could even place charges on their bills. As the use of mobile payments grows, we will continue to hold wireless carriers accountable for illegal third-party billing.”<sup>4</sup>

According to press reports, the Federal Communications Commission (“FCC”) is separately investigating this matter, and the CFPB stated in its press release that it worked in close coordination with the FCC, receiving “valuable assistance” from the FCC’s Enforcement Bureau. The CFPB’s action follows a number of other federal regulatory actions with respect to the alleged practices, including:

- On October 8, 2014, the Federal Trade Commission (“FTC”) and the FCC jointly announced a \$105 million settlement with AT&T Mobility LLC relating to allegations that AT&T billed its customers without proper consent for subscription-based services offered by third-party companies, and that AT&T kept a percentage of the charges.
- On August 5, 2014, the FTC announced a settlement with Tatto, Inc. regarding allegations that the company used deceptive Web sites to collect consumers’ mobile phone numbers.
- On July 29, 2014, the FTC announced that it had successfully requested a Federal court to halt certain mobile practices involving multiple companies that resulted in consumers being charged more than \$100 million without their authorization.
- On July 16, 2014, the FCC announced a consent order with Assist 123, LLC to settle allegations that the company placed unauthorized charges on consumer phone bills for a “Concierge/Directory Assistance” service that was not authorized by consumers.

We will continue to analyze industry developments related to this heightened regulatory scrutiny of telecommunications carriers as they develop.

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<sup>4</sup> CFPB, Prepared Remarks of CFPB Director Richard Cordray at the Sprint Enforcement Press Call, Dec. 17, 2014, <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-sprint-enforcement-press-call/>.

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