

Client Alert

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CFPB Files Proposed Consent Orders Related to Wireless Billing Practices

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On May 12, 2015, the Consumer Financial Protection Bureau (the “CFPB”) filed proposed consent orders in federal courts that would settle allegations that two wireless carriers unfairly permitted their customers to be charged by establishing billing and processing systems that enabled third-party merchants to bill consumers for unauthorized purchases. The CFPB initially brought suit in December against one carrier, but in a significant new development, the CFPB filed suit and a proposed related consent order involving a second carrier. In both cases, the CFPB alleged that the billing practices employed by the carriers violated the federal prohibition against unfair, deceptive or abusive acts or practices (“UDAAP”). The CFPB alleged, among other things, that carriers failed to address warning signs that third-party merchants were submitting unauthorized charges.

The alleged UDAAP violations are significant, as these cases are among the first instances where the CFPB has taken action against companies that, prior to the enactment of the Consumer Financial Protection Act, were not traditionally subject to the enforcement authority of federal financial regulators. Specifically, the CFPB alleged that the carriers extended credit to, and processed payments for, consumers and therefore are “covered persons” under the Consumer Financial Protection Act.

The terms of both proposed consent orders are broadly similar. Each carrier would be required to:

- Stop offering third-party products through premium text messages. This requirement has already been implemented by the carriers, and indeed, most carriers no longer have premium text message services.
- Obtain express informed consent for third-party charges billed to a prepaid wireless account.
- Provide purchase confirmation following a consumer’s purchase of a third-party product. The confirmation would be separate from the wireless bill and would identify options for the consumer to block third-party charges or to prevent wireless lines from making purchases.
- Identify third-party charges in a separate section of a consumer’s wireless bill.
- Disclose to consumers their right to block third-party charges upon account activation.
- Refund disputed third-party charges, with the carrier having the burden of proving that a charge was indeed authorized.

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Together, the carriers would have a maximum potential obligation to refund \$120 million to consumers. In addition, the CFPB's press release states that the carriers would collectively pay \$38 million in federal and state fines. The Federal Communications Commission, the Federal Trade Commission and a number of state attorneys general participated with the CFPB in the actions.

Links to the CFPB's press release, civil claims and proposed consent orders may be found below:

- CFPB Press Release: <http://www.consumerfinance.gov/newsroom/cfpb-sues-sprint-for-cramming-consumers-with-unauthorized-third-party-charges/>.
- Civil Claim: http://files.consumerfinance.gov/f/201505_cfpb-cfpb-v-verizon-complaint.pdf.
- Proposed Consent Order: http://files.consumerfinance.gov/f/201505_cfpb-cfpb-v-verizon-proposed-order.pdf.
- Civil Claim: http://files.consumerfinance.gov/f/201412_cfpb_cfpb-v-sprint-complaint.pdf.
- Proposed Consent Order: http://files.consumerfinance.gov/f/201505_cfpb-cfpb-v-sprint-corporation-proposed-order.pdf.

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