

BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking on the
Commission's Own Motion to establish
Consumer Rights and Protection Rules
Applicable to All Telecommunications
Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON CRAMMING COMPLAINT REPORTING RULES
PURSUANT TO FEBRUARY 12, 2010
ASSIGNED COMMISSIONER'S RULING**

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I. INTRODUCTION

Pursuant to the February 12, 2010 Assigned Commissioner's Ruling Requesting Comment on Proposed California Telephone Corporation Billing Rules ("ACR"), the Division of Ratepayer Advocates ("DRA") files these comments in support of the proposed rules in the ACR. DRA also proffers several recommendations to help the Commission achieve the ACR's stated objectives.¹

DRA applauds the Commission for taking proactive steps to protect consumers in California from the unscrupulous business practice of cramming.² Cramming not only causes considerable economic injury to the public, but it also threatens the integrity of the public telephone system. The phone bill is intimately interwoven into our lives. Therefore, it should bear the same scrutiny as other fiduciary or quasi-fiduciary contractual relationships. It is, as one local commentator said, "sacred territory."

All of the rules proposed by the ACR are necessary for the Commission to carry out its obligations under Public Utilities (P.U.) Code Sections 2889.9 and 2890 ("anti-cramming statutes"). Indeed, the complaint reporting of *all* cramming complaints is especially critical for the Commission's enforcement division. DRA requests that the Commission adopt the proposed rules so that the Commission can fulfill its promise to "step-up its efforts in the enforcement area."³

II. THE PROPOSED REPORTING RULES ARE LEGALLY REQUIRED UNDER P.U. CODE SECTIONS 2889.9 AND 2890

A. California's Anti-Cramming Statutes

In 1998, through the enactment of Public Utilities (P.U.) Code Sections 2889.9 and 2890, the Legislature sought to combat cramming. One way was "to ensure that the

¹ See ACR at 7 ("Due to the advanced stage of this proceeding, Comments should focus closely on the proposed rules and include specific remedies for identified deficiencies or alternatives that better meet the stated objectives.")

² See *Assigned Commissioner's Ruling Requesting Comment and Briefing on Cramming Reporting Requirements*, R.00-02-004 (Feb. 22, 2008) at 2, citing FCC Website www.fcc.gov/cgb/consumerfacts/cramming.html ("Cramming" occurs when unauthorized, misleading, or deceptive charges are placed on a subscriber's phone bill.")

³ *Id.* at 6.

PUC is kept abreast of the number and types of complaints...for charges for services or products that appear on a telephone bill.”⁴ To that end, Section 2889.9 mandated the Commission to require “each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers’ telephone bills” to report to the Commission complaints made by subscribers.⁵ In addition, Section 2890 made clear that “a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.”⁶ The Legislature intended Sections 2889.9 and 2890 “to be read together and serve as a deterrence to cramming.”⁷

B. The Commission’s Commitment to Step Up Its Enforcement Efforts

For the Commission to effectively deter cramming, it must vigorously monitor the communications marketplace and prosecute “bad actors.” In the Commission’s *Consumer Protection Initiative Decision*, D.06-03-013, the Commission emphasized that the key to protecting consumers against unscrupulous practices by carriers is enforcement.⁸ “Data provided to the Commission staff from carriers pursuant to a reporting requirement is an essential tool in the Commission’s enforcement efforts.”⁹ Tracking and reporting of *all* cramming complaints made against companies responsible for placing charges on a subscriber’s telephone bill is essential to the Commission’s monitoring efforts. Anything less not only would violate Section 2889.9, but the effects on the Commission’s enforcement efforts would be crippling.¹⁰ The Commission often

⁴ Senate Appropriations Committee Fiscal Summary, A.B. 2142, August 6, 1998.

⁵ Pub. Util. Code § 2890(d).

⁶ Pub. Util. Code § 2890(a).

⁷ Stats. 1998, ch. 1036 (A.B. 2142), § 1 and Stats. 1998, ch. 1041 (S.B. 378), § 1(e).

⁸ *Assigned Commissioner’s Ruling Requesting Comment and Briefing on Cramming Reporting Requirements*, R.00-02-004 (Feb. 22, 2008) at 4.

⁹ *Id.*

¹⁰ See DRA Opening Comments (April 7, 2008) at 2-6, 11-30. In Opening Comments, DRA extensively briefed the complaint reporting mandate of Section 2889.9 and the policy reasons against any attempts to limit the types of cramming complaints that should be reported to the Commission; see also DRA Reply Comments (April 28, 2008) at 16-19.

relies on the monthly reports of cramming complaints, which includes *all* complaints, in its decisions to initiate investigations, or to ultimately impose fines and sanctions.¹¹

DRA believes that the Commission's enforcement efforts would be enhanced if the Commission's enforcement branch received the reports on a monthly basis, rather than quarterly. With cramming detection, time is of the essence.¹² Additionally, DRA believes that deterrence would be more effective if the penalties for late reports were to be scalable based on the size of the company.

III. THE PROPOSED RULES ARE NECESSARY BECAUSE CRAMMING IS STILL A MAJOR PROBLEM COSTING AMERICANS MILLIONS OF DOLLARS

A. Recent Cramming Schemes

The marketplace facilitates cramming. This is so because everyone in the Third Party Billing food chain receives a slice of the revenues.¹³ The payout can be very high – in the millions, even hundreds of millions of dollars, for crammers. One of the most notorious cramming schemes, which generated over \$420 million, involved the Gambino crime family and the billing aggregator USP&C.¹⁴ According to one news report, the scams worked like this:

People who called 1-800 phone numbers advertising free samples of phone sex, psychic hot lines and dating services unwittingly triggered recurring monthly charges that appeared on their phone bills as “voice-mail services” and other innocuous services.

¹¹ See e.g. D.01-04-036/I.99-10-024 (USP&C); I.99-04-023 (Accutel); I.00-11-052 (Qwest); I.99-12-001 (Coleman Enterprises); D.06-04-048/A.02-10-007 (New Century Telecom); I.02-01-024 (Pacific Bell).

¹² This is so because entities which engage in cramming can fold their tents and disappear into the night on short notice, depriving the Commission of the opportunity to take enforcement actions. See DRA Opening Comments (April 7, 2008) at 11.

¹³ *Id.* at 10.

¹⁴ See *United States v. Locascio*, 357 F. Supp. 2d 558 (E.D.N.Y. 2005); see also Indictment available at http://www.justice.gov/usao/nye/vw/PendingCases/CR-03-304_Indictment_S6-US_v_SALVATORE_LOCASCIO.pdf; see also *Justice Department Announces 'Operation Roaming Charge' Targeting International and Domestic Telemarketing Fraud*, U.S. Department of Justice, Oct. 5, 2004, available at http://www.justice.gov/opa/pr/2004/October/04_crm_680.htm; see also *Alleged mobsters guilty in vast Net, phone fraud*, Feb. 15, 2005, available at http://www.msnbc.msn.com/id/6928696/ns/us_news-crime_and_courts/

At the same time, the scheme trapped Web surfers seeking adult content on the Internet by enticing them to enter their credit card information for “free” tours, only to begin billing them between \$20 and \$90 a month.¹⁵

Since then, Third Party Billing continues to attract fraudsters.¹⁶

The Washington Post reported this month that there is a “resurgent wave of crammers who may be ensnaring millions of Americans.”¹⁷ “As phone bills, both conventional and cellular, have become more complex, crammers are making a comeback by using sophisticated marketing techniques and by launching their schemes from overseas to try to escape the purview of U.S. regulators.”¹⁸ For example, just last month at the request of the Federal Trade Commission (“FTC”), the Honorable William Alsup in the U.S. District Court for the Northern District of California issued an injunction against crammer Inc21.com Corporation.¹⁹ See court documents attached as Appendix A. Inc21 hired overseas telemarketers to purportedly sell directory assistance

¹⁵ *Alleged mobsters guilty in vast Net, phone fraud*, msnbc.com, Feb. 15, 2005, available at http://www.msnbc.msn.com/id/6928696/ns/us_news-crime_and_courts/

¹⁶ *Memorandum Opinion and Findings In Support of Preliminary Injunction*, Feb. 19, 2010, at 2, F.T.C. v. Inc21.com Corp., No. C 10-00022 (N.D. Cal. March 16, 2010), referencing *In the Matter of Truth-in-Billing and Billing Format*, 14 F.C.C.R. 7492 (1999) (discussing rampant fraud in the LEC billing industry). The Preliminary Injunction court documents are attached to these comments as Appendix A; see also *People of the State of Illinois v. Minilec IS Warranty*, Case No. 2009-CH-000378 (May 12, 2009)(Case pending); see also *Evercom Systems, Inc. v. Iowa Utilities Board*, No. 09-0427 (Iowa App. Feb. 10, 2010) (Court affirmed Board’s penalties of company for “cramming.”); see also *Micronet, Inc. v. Indiana Utility Regulatory Com’n*, 866 N.E.2d 278 (Ind.App. May 10, 2007) (Court affirmed Commission’s ruling that company’s “cramming” violated state law); see also *OCCM, Inc. v. Norris*, 428 F.Supp.2d 930 (S.D. Iowa 2006) (Court dismissed company challenge to state disciplinary action for “cramming” because jurisdiction barred since state already began proceedings against company); see also *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 910 N.E.2d 1040 (2009) (Court denied company’s motion to dismiss, now pending); see also *Beattie v. CenturyTel, Inc.*, 234 F.R.D. 160 (E.D.Mich. 2006) (District Court denied motion to dismiss by company).

¹⁷ *Misdials Help ‘Crammers’ Ring Up Millions in Phone Bill Scam*, Washington Post, March 1, 2010, available at

http://www.washingtonpost.com/wp-dyn/content/article/2010/02/28/AR2010022803750_2.html

¹⁸ *Misdials Help ‘Crammers’ Ring Up Millions in Phone Bill Scam*, Washington Post, March 1, 2010, available at

http://www.washingtonpost.com/wp-dyn/content/article/2010/02/28/AR2010022803750_2.html

¹⁹ *Memorandum Opinion and Findings In Support of Preliminary Injunction*, Feb. 19, 2010, F.T.C. v. Inc21.com Corp., No. C 10-00022 (N.D. Cal. March 16, 2010); see also *FTC Halts Massive Cramming Operation that Illegally Billed Thousands; Alleges Scam Took in \$19 Million over Five Years*, Federal Trade Commission, March 1, 2010, available at <http://www.ftc.gov/opa/2010/03/inc21.shtm>

and other services to small businesses and ordinary customers, but court documents revealed that their real goal was to sneak small, unauthorized fees onto thousands of monthly bills and hope the charges would go unnoticed.²⁰ The crammers' alleged take for this scam was \$19 million over five years.²¹

DRA notes that the injunction ordered Pacific Bell, who received proceeds from the scam by acting as the Billing Telephone Company, to refund money to nearly 11,000 customers. The Court was not convinced by Pacific Bell's argument against the injunction,²² and explained,

It seems that Pacific Bell could have organized the LEC billing process – from which it presumably profits handsomely – to have more control over the flow of funds going to potentially fraudulent business, but has simply chosen not to do so. This order declines to exempt Pacific Bell and other LECs from the preliminary injunction. *LECs have a responsibility to learn the ultimate destination of the funds they are charging their own customers so that if and when fraud occurs, they can protect their customers and immediately put an end to the fraudulent billing.*²³

In issuing the injunction Judge Alsup also had this to say about the practice of Third Party Billing:

This action highlights the vulnerable underbelly of a widespread and under-regulated practice called LEC billing. LEC billing — or “Local Exchange Carrier” billing — arose out of the court-ordered break-up of AT&T in the 1980s. *See United States v. American Tel. & Telegraph Co., 552 F.Supp. 131, 227 (D.D.C. 1982)*. After AT&T agreed to divest its local phone operations into seven independent regional holding companies, the local phone companies continued to present customers with the convenience of a single telephone bill for both local and long-distance fees, despite the fact that

²⁰ *Memorandum Opinion and Findings In Support of Preliminary Injunction*, Feb. 19, 2010, F.T.C. v. Inc21.com Corp., No. C 10-00022 (N.D. Cal. March 16, 2010).

²¹ *Id.*

²² *Id.*

²³ *Memorandum Opinion and Findings In Support of Preliminary Injunction*, Feb. 19, 2010, at 17, fn. 22, F.T.C. v. Inc21.com Corp., No. C 10-00022 (N.D. Cal. March 16, 2010). (Emphasis added.)

the long-distance services were provided by separate business entities. LEC billing was born. Four years later, the FCC detariffed the billing and collection services provided by local telephone companies, opening the door for LEC billing to be used as a method of charging and collecting payments for a wide variety of services. *See In the Matter of Detariffing Billing and Collection Services*, 102 F.C.C.2d 1150 (1986). Today, the types of charges that can appear on local telephone bills through LEC billing encompass far more than long-distance services and can have almost nothing to do with phone services.

Since its institution, LEC billing has attracted fraudsters. *See, e.g., In the Matter of Truth-in-Billing and Billing Format*, 14 F.C.C.R. 7492 (1999) (discussing rampant fraud in the LEC billing industry). In response to escalating consumer complaints regarding the placement of unauthorized charges on their phone bills — a practice known as “cramming” — the FCC responded in the late 1990s by adopting principles and guidelines to help consumers understand their phone bills and to deter this fraudulent practice. Of course, the approach taken by the FCC was (and remains today) premised on the dubious assumption that consumers scrutinize their phone bills every month before paying them, and local phone companies are vigilant about allowing only *authorized* third-party charges to appear on their phone bills. *See In the Matter of Consumer Information and Disclosure*, 24 F.C.C.R. 11380 (2009). Fraudsters can easily exploit this dubious assumption.²⁴

Another recent scam, which involved crammers preying upon consumers misdialing toll free numbers, highlights the speed at which crammers can execute a scheme. When Toyota released a toll-free phone number for its massive car recall, the next day a Detroit based wire service incorrectly printed the phone number with an incorrect digit. “By then, a crammer had already set up a scam. Consumers who dialed the wrong number were asked by an unidentified voice to hand over their personal information, such as their social security number, and for permission to add a \$4.95 charge to their phone bill. Unless they realized they had misdialed, many of the

²⁴ *Id.* at 1-2.

consumers might have thought they had reached a Toyota official rather than a crammer...”²⁵ With this type of scam, “[c]rammers typically reserve toll-free phone numbers that are very similar to frequently used customer-service numbers of agencies such as the Internal Revenue Service or the Social Security Administration. Customers are made to think they had reached the right number and then are tricked into accepting a charge on their phone bill.”²⁶

B. The Victims

In this proceeding carriers complain about how burdensome tracking and reporting complaints would be. DRA has responded to this complaint extensively in previously submitted comments, and has demonstrated the hollowness of this claim.²⁷ In reality, the real burden of cramming falls upon the victims. To better understand cramming from the customer’s perspective, DRA provides the following excerpts taken from cramming complaints lodged with the Commission.

- *I wrote to the AT&T but like anything else I never get an answer. Yet, they keep billing me for something I do not use and do not need. Of course crooks are born every minute and I am being taken. It is bad enough to be charged for everything under the sun. I am 90 years of age and do not have to take this sh** from anybody or any company.*²⁸
- *I was treated for cancer last year and had to cancel my messaging center through ATT at that time; once I felt better following treatment I resumed ATT messaging services. I never agreed to this "enhanced billing service" which according the USB Organization, INC they say my business listed in an online directory. In these hard financial times for the construction industry I would not have chosen this service. After cancer treatment I have scaled my business down to a few select contractors I already have a relationship with. I am*

²⁵ *Misdials Help ‘Crammers’ Ring Up Millions in Phone Bill Scam*, Washington Post, March 1, 2010, available at

http://www.washingtonpost.com/wp-dyn/content/article/2010/02/28/AR2010022803750_2.html

²⁶ *Id.*

²⁷ DRA Comments (April 8, 2008) at 25-26.

²⁸ CAB Complaint # 2908 (Dec. 29, 2008).

not looking for new clientele. Their claim that I signed up for this service does not add up.

I think I have and continue to be taken advantage of and if ATT cannot help me in this matter I will have to look into an alternative phone company. I want all of the USB Organization fees credited to my account. According to my records I have fraudulently been charged \$29.95 for seven months for a total of \$209.65. I have done some internet research on this company and I am not the first business that has fraudulently been charged. I am requesting that ATT delete this additional charge & note that they do not have my authorization to bill my account for this service or any add on service. I am also requesting they put a block on any type of add on service. It does not appear that a phone call to these frauds will resolve this issue!!²⁹

- I am contacting you regarding my phone bill. I have a company by the name of USBI that contacted one of my employees and I guess represented themselves as AT&T. They provided with a recording of the conversation but I am unable to understand what conversation transpired. They are a very rude group of people and my employee does not remember ever having a conversation with them. I have on 4 different occasions called this company and requested they stop billing me for the charges but each month I get another bill. I have spoken with AT&T and they have credited my account but I keep getting these charges on my bill. Can you help? I really need it to stop.³⁰*
- We have been getting billed from our cellular telephone service company for some unauthorized charges that we have not requested nor used from a 3rd party services (Digital Content and Predicto Vote). Every time there is a text from this company, we have ignored it because we were too scared to respond and assumed it was similar to SPAM mail and would welcome even more harassment from them and other companies.³¹*

IV. THE ACR CORRECTLY PLACES LIABILITY ON BILLING TELEPHONE CORPORATIONS FOR CRAMMED CHARGES

Consistent with Sections 2889.9 and 2890, the ACR proposes to place ultimate responsibility on Billing Telephone Corporations for all items presented in a subscriber's

²⁹ CAB Complaint # 3897 (Nov. 5, 2008).

³⁰ CAB Complaint # 11630 (Dec. 17, 2008).

³¹ CAB Complaint # 59177 (Aug. 17, 2009).

telephone bill.³² In requiring one Billing Telephone Corporation, Pacific Bell, to issue refunds in the FTC's case against a third party service provider, Inc21.com, the Hon. William Alsup argued, "LECs have a responsibility to learn the ultimate destination of the funds they are charging their own customers so that if and when fraud occurs, they can protect their customers and immediately put an end to the fraudulent billing."³³ DRA emphatically agrees.

The ACR also requires Billing Telephone Corporations that offer billing services to third parties to "...take all commercially reasonable steps to ensure that only authorized charges from legitimate service providers are included in the bill."³⁴ DRA cautions against leaving the term "commercially reasonable" open for interpretation without any further guidance from the Commission.

Based on a reading of the earlier comments of wireless providers, those carriers may consider no steps to be "commercially reasonable." For instance, from the carriers' perspective, the telecommunications industry is already working hard to protect consumers against cramming activities.³⁵ They emphasized that their industry guidelines and internal practices are already designed to guard against cramming;³⁶ and thus, no further regulation or action is necessary.

It is virtually impossible, however, for the industry to police itself because each entity in the Third Party Billing food chain gets a slice of the revenues. Moreover, there would have been no need for the Legislature to enact the anti-cramming laws if the industry truly were regulating itself. The Commission should make the Billing Telephone Corporations, billing agents, and service providers all ultimately responsible for ensuring that unauthorized charges are not placed on a subscriber's bill. If the

³² ACR at Appendix, A-2.

³³ *Memorandum Opinion and Findings In Support of Preliminary Injunction*, Feb. 19, 2010, at 17, fn. 22, *F.T.C. v. Inc21.com Corp.*, No. C 10-00022 (N.D. Cal. March 16, 2010); *see also* DRA Comments (April 7, 2008) 2-6.

³⁴ ACR at Appendix, A-2.

³⁵ *See e.g.* Opening Comments of CTIA-The Wireless Association on Assigned Commissioner's Ruling Regarding Cramming Reporting Requirements (4/7/2008) at 7.

³⁶ *Id.*

Commission ultimately considers commercially reasonable steps sufficient to protect consumers, then the Commission can make that decision after reviewing the record in this proceeding. If cramming problems persist, the billing telephone corporation should detail to the Commission all steps it is taking to reduce the level of cramming.

In addition, DRA suggests that the Commission require Billing Telephone Corporations to provide customers the cost-free option to block Third Party Billing at any time. Further, carriers must make their customers aware that the blocking option exists. Currently, customers are given mixed signals by Billing Telephone Corporations when they attempt to place a block of all third party charges on their account. Service representatives from some Billing Telephone Corporations claim that federal and state laws mandate that they bill for third parties, and refuse to block third party charges on bills. For example in several CAB complaints, customers asked to block any third party charges on their bills, but the companies stated that due to regulations, they are not allowed to block third party charges.³⁷ Other Billing Telephone Corporations do provide a free third party bill blocking option.³⁸ From complaints cited above, customers are frustrated that they cannot control who puts charges on their bills.

DRA sympathizes with those customers and proposes that all Billing Telephone Corporations be required to block third party charges when customers initiate service or whenever customers request it. This option is consistent with the Legislature's intent to "reduce the inclusion of unauthorized charges on a telephone subscriber's bill."³⁹

³⁷ See e.g., CAB Complaint #'s 65365 (Sept.24, 2009); 65290 (Sept. 23, 2009); 60270 (Aug. 28, 2009); 27893 (Mar. 4, 2009).

³⁸ See e.g. Verizon Product Guide, Section 6, Sheet 14. AT&T told DRA that it does not advertise the option for third party blocking on its website. However, upon a customer's request, AT&T can make a request to the third party to no longer place charges on the customer's bill. Based on AT&T's response, third party blocking appears to be only on a case-by-case basis with which service provider to block. This is problematic to DRA because it requires the customer to keep calling AT&T back when a different service provider appears on the bill.

³⁹ 1998 Cal. Legis. Serv. Ch. 1041 (S.B. 378).

V. THE COMMISSION SHOULD MAKE CLEAR THAT SERVICE PROVIDERS MUST BE DISCLOSED ON A CUSTOMER'S TELEPHONE BILL

The ACR's first objective in prescribing the rules is to prevent unauthorized charges from being placed on customers' bills.⁴⁰ The locus of protection, therefore, is the customer's telephone bill. However, the proposed rules do not include the mandates of Section 2890(d)(2)(B), which require that bills contain "the name of the party responsible for generating the charge."⁴¹

In D.01-04-036, the Commission interpreted the party generating the charge to be the party who purports to have sold a product or service to a customer. In D.03-04-062, the Commission confirmed that its interpretation of this section was consistent with FCC Guidelines that require the service provider's name to appear on customer's bills.⁴² Moreover, "[i]f one company generates the charge, and another company passes the charge through from the service provider to the LEC, both companies must be listed on the bill."⁴³ The bill should also be presented in a straightforward manner so that customers can easily determine the company responsible for generating the charge.

However, billings for third parties can be inadequate, misleading, and generally confusing to consumers.⁴⁴ Inclusion on telephone bills of the name of the billing agent/aggregator and the agent/aggregator's contact information on the Third Party Billing page, leads the customer to think that the billing agent/aggregator is providing the service, when in fact a third party provided the service. And at times, the third party service provider's telephone number is not listed.⁴⁵ At a minimum, "just and reasonable billing," as mandated by P.U. Code Section 451, includes clear and conspicuous disclosure of the *actual, legal name* of the third-party service provider who is providing

⁴⁰ ACR at 2.

⁴¹ P.U. Code § 2890(d)(2).

⁴² D.03-04-062 at 12.

⁴³ *Id.* at 13.

⁴⁴ See e.g., *Phone bill 'cramming' spikes again*, MSNBC.COM (January 30, 2010) found at <http://www.msnbc.msn.com/id/3078500>.

⁴⁵ See e.g., CAB Complaint # 3749 (Nov.3, 2008).

the service and ultimately collecting the revenue for same. Hopefully, this is the same third party entity that is “causing” the charge to be put on the bill.⁴⁶ Therefore, the Commission should make this requirement explicit in the rules.

From the consumer’s perspective, it is a burden to get the “runaround” when one calls the billing agent and the billing agent tells you to call another number to reach the service provider. Yet, the phone bill contains only the contact information for the billing agent in the first place. It is confusing to consumers to include the contact information for billing agents/aggregators, separate and apart from the third-party service provider, unless billing agents/aggregators will give customer refunds for the charges generated by the service provider.

VI. AN AGGRESSIVE BILLING TERMINATION PROCESS IS NECESSARY TO DETER CRAMMING

DRA agrees with the proposed rule requiring each billing telephone corporation and billing agent to have and comply with a protocol for quickly dealing with cramming charges and crammers.⁴⁷ That protocol includes an immediate suspension of billing and collection services to a service provider and retention of customer payments if a 10% customer complaint or refund threshold rate is met.

What is unclear, however, is how to calculate the 10% and during which period of time it would apply. To adequately protect customers and deter cramming, billing entities should be aggressive in their approach. DRA proposes that the 10% be calculated by taking the number of complaints or refunds divided by the number of billed telephone numbers (BTNs) during each month. Billing Telephone Corporations should terminate billing services for any billing agent or service provider that reaches the 10% threshold two months per quarter.

⁴⁶ Compare 47 CFR 64.2401(a):

Bill organization. Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.

⁴⁷ ACR at Appendix, A-3.

If a service provider is terminated by a billing telephone corporation for cramming, then the billing telephone corporation should alert customers that this service provider has been terminated because it had crammed other customers. “As the FCC, the FTC, and the legislative intent of Sections 2889.9 and 2890 make clear, cramming is often hard to detect, and as a result, some subscribers who are harmed never attempt to get the illegal charges refunded.”⁴⁸

VII. ADDITIONAL STEPS THE COMMISSION SHOULD TAKE TO DETER CRAMMING AT NO COST TO CARRIERS

A. Publicize Carrier Specific Cramming Complaints

The Commission declared its intention to make information collected by CAB to be widely available.⁴⁹ The Commission went further in the *LEP Phase II Decision* and ordered the reporting of carrier-specific LEP data on the CPUC website. The Commission provided the following rationale for this proactive step:

We agree that publishing data on LEP consumer contacts (informal complaints and inquiries that are not complaints) with CAB will assist LEP consumers in making better informed choices. Therefore we will require that Commission staff periodically publish data on LEP consumer contacts with CAB, and post that data on the Commission’s website.....⁵⁰ However, without the CIMS data on LEP consumer contacts with CAB, LEP consumers will not necessarily know that they should try to find out more about a particular carrier. Thus, publishing carrier-specific LEP consumer contact data supports our LEP consumer education efforts.⁵¹

The Commission should require something similar here with the monthly summary cramming complaint reports.

⁴⁸ *Assigned Commissioner’s Ruling Requesting Comment and Briefing on Cramming Reporting Requirements*, R.00-02-004 (Feb. 22, 2008) at 16.

⁴⁹ R.07-01-021, D.07-07-043, at 97.

⁵⁰ R.07-01-021, D.08-10-016 October 2, 2008 at 155. “We will require that published data to be normalized (that is, presented as “contacts per 100,000 wireline telephone lines or wireless accounts”) so that the data are comparable among carriers of different sizes.”

⁵¹ *Id.* at 159.

Pursuant to D.00-03-020, the current cramming complaint reports submitted by carriers and billing agents/aggregators include both the total number of cramming complaints and billed telephone numbers (BTNs). From that data, the Commission should publish complaints per BTN ratios, so customers can be informed of which potentially fraudulent companies they should look for on their telephone bills. Another report that should be generated from this cramming complaint data set is a list of the third party service providers and the number of cramming complaints for each.

DRA notes that the monthly cramming complaint reports from Billing Telephone Corporations and billing agents/aggregators yield more accurate data regarding the number of cramming complaints than the complaints received by the Commission. Customers will always complain to their carrier or the billing agent/aggregator before they lodge a complaint with the Commission. This disparity in complaint data is due in part to the Commission's policy to require customers to first contact their carriers with complaints and because many carriers have a one-call policy and automatic credits for cramming complaints.

B. Address the Problem of Mischaracterization of Cramming Complaints

The Commission should continue its development of the CIMs system and CAB procedures to better and properly track cramming complaints, as detailed in Appendix B. From DRA's analysis detailed in Appendix B, the number of complaints received by CAB does not accurately reflect the pervasiveness of the cramming problem.

VIII. CONCLUSION

Cramming is on the rise again and will undoubtedly continue unless the Commission makes its presence known to crammers. The significant financial incentives involved with the business of Third Party Billing casts doubt on the ability of the industry to police itself. That is why the ACR's proposed rules are critical, not only for the protection of consumers, but also for the integrity of the public telephone system. DRA requests that the Commission adopt the rules proposed by the ACR with the modifications suggested in these comments.

Respectfully submitted,

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March 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON CRAMMING COMPLAINT REPORTING RULES PURSUANT TO FEBRUARY 12, 2010 ASSIGNED COMMISSIONER’S RULING** to the official service list in **R.00-02-004** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on March 22, 2010 at San Francisco, California.

/s/ CHARLENE D. LUNDY
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