

**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 Consumer Protection
Rules Applicable to All Telecommunications
Utilities.

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

**REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC. (U-3076-C) AND
METROPCS CALIFORNIA, LLC (U-3079-C)**

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Pursuant to the Assigned Commissioner’s Ruling (“ACR”) issued in this proceeding on February 12, 2010, Cricket Communications (U-3076-C) (“Cricket”) and MetroPCS California, LLC (U-3079-C) (“MetroPCS”) respectfully submit these reply comments in the above-captioned proceeding.

I. INTRODUCTION

Surveying the comments on the proposed rules included in the ACR (“Proposed Rules”), it is clear that all parties want to (i) prevent cramming and (ii) swiftly detect and shut down offenders. Parties differ, however, on the most effective means to achieve these common goals.

As an initial matter, the Division of Ratepayer Advocates (“DRA”), the Utility Reform Network (“TURN”) and the Utility Consumers’ Action Network (“UCAN”) support a sweeping, generalized reporting requirement that would include complaints received in connection with primary and third-party services. In contrast, all of the carrier commenters (including Cricket and MetroPCS) urge that there is no evidentiary basis for the adoption of burdensome reporting rules and advocate other more focused, targeted approaches to achieving these common goals (including a “bad actor reporting” protocol supported by Cricket, MetroPCS, CTIA and other wireless carriers).

The carrier commenters all offer extensive comments explaining why the proposed reporting rules would be burdensome and costly to implement and why such burdensome reporting requirements would not advance the Commission's goals. In contrast, none of the comments filed by DRA, TURN or UCAN provide any specific rationale or explanation as to how reporting such voluminous complaint data will reduce the number of cramming incidences or much less explain why a more focused approach would not produce the same or better results at a cheaper cost to service providers (and, in turn, consumers). If adopted, the requirements contained in the Proposed Rules would cause substantial increases in operating costs, which may cause prices for services to rise and, in some instances, force carriers to forego allowing third parties to bill (and consumers the option of having charges billed) for third party services. In the instance of MetroPCS and Cricket, these customers may not be able to subscribe to other wireless services that would allow third party billing because of lack of credit, and therefore they would be denied the benefits of these services. Additionally, neither the ACR nor any consumer group commenters offer any rationale as to why the same rules should apply to post-pay and pay-in-advance or prepaid carriers, despite the significantly reduced potential for cramming in the latter service models.

In addition to objecting to the onerous and costly reporting requirements set forth in the Proposed Rules, many of the carrier commenters (including Cricket and MetroPCS) assert that substantive changes to the other sections of the current anti-cramming rules are outside the scope of this proceeding and are unjustified. These commenters point out that the Commission and concerned parties recently concluded a comprehensive assessment and rewrite of the anti-cramming rules only a short number of years ago. Notably, these revised rules were adopted by

the full Commission and with the express support of the current Assigned Commissioner.¹ The only issue left open for future consideration by the decision adopting the existing rules was the consideration of requirements for reporting cramming-related complaints.² Moreover, the record since that decision is devoid of any justification for revisiting the current rules, and neither the ACR nor parties supporting such changes provide any rationale for changing the existing rules.

For these reasons, among others detailed below, the Commission should expressly limit the scope of this proceeding to consideration of *reporting requirements* for cramming-related complaints. Moreover, with respect to developing reporting requirements for cramming-related complaints, the Commission should allow parties appropriate time and procedural vehicles (such as Commission-sponsored workshops) through which to make a proper assessment of the reporting measures that would most efficiently inhibit unscrupulous actors from cramming. Finally, should the Commission choose to adopt broad-brush reporting requirements such as those contained in the Proposed Rules, it should exempt wireless pay-in-advance and prepaid service providers from such requirements in light of the fact that these service models simply do not pose the same potential for cramming as more traditional post-pay service models.

II. THE GENERALIZED REPORTING REQUIREMENT SET FORTH IN THE PROPOSED RULES WOULD IMPOSE SIGNIFICANT COSTS WITHOUT PROVIDING USEFUL DATA TO COMBAT CRAMMING

The general reporting requirements contained in the Proposed Rules would result in carriers having to build systems to capture and report overwhelming volumes of data for submission to Commission staff, none of which is likely to be sufficiently uniform to be useful in

¹ Decision 06-03-013 (revising General Order 168, effective March 2, 2006).

² *Id.*, mimeo at 92-94.

detecting cramming practices.³ Moreover, the costs associated with designing, implementing and operating systems required to produce this data of questionable value are guaranteed to be exorbitant.

One of the key problems with requiring the reporting of every “complaint” is correctly categorizing them. As CTIA explains, “complaints cannot be consistently and accurately categorized by thousands of individual customer service representatives due to the complexity and subjectivity involved in the classification and tracking process.”⁴ The unreliability of this data is not just theoretical. In its comments, Verizon Wireless describes an experiment in which it asked customer care representatives to track the reasons for customer calls.⁵ Verizon Wireless ultimately abandoned the experiment “because it found that the resulting data was of too poor quality to be useful, due to discrepancies between the reasons for calls and the categorization by customer service representatives.”⁶

The Commission’s own struggles in categorizing the complaints it receives underscore the difficulty of correctly categorizing data. In its comments, DRA asserts that “[i]t is not uncommon for Consumer Affairs Branch (“CAB”) representatives to code cramming complaints as billing disputes.”⁷ In an examination of a sample of billing disputes, DRA reversed CAB’s interpretations and recategorized up to 18% of “billing disputes” as cramming complaints, which

³ The generalized reporting requirements set forth in the Proposed Rules also exceed the direction provided by Public Utilities Code Section 2889.9(d), which limits complaint reporting requirements to cramming-related complaints associated with third party services. Moreover, as Verizon California points out in its comments, the statute’s legislative history demonstrates that the Legislature did not intend to impose an obligation for carriers to “self-report.” *See* Verizon California, Inc. Comments at 11. As a result and in all cases, the Commission should limit any reporting requirements to cramming-related complaints attributable to third-party services.

⁴ CTIA Comments at 19. *See also* Verizon Wireless Comments at 19-21.

⁵ Verizon Wireless’ effort was not in response to a Commission requirement, but rather just an attempt to gain feedback about its products and services. Verizon Wireless Comments at 20.

⁶ Verizon Wireless Comments at 20-21.

⁷ DRA Comments, Appendix B at 1.

represents an incredible margin of error for statistical analysis purposes.⁸ Cricket and MetroPCS are unable to specifically comment on the accuracy of DRA's without the underlying data, but it is significant that even the Commission's specially trained CAB representatives—whose sole job is to field complaints—have difficulties categorizing complaints. In contrast to CAB's complaint specialists, carriers' "front line" customer service representatives must field inquiries ranging from how to set up voicemail to advising on different service and pricing options. Given the wide range of inquiries that these customer service representatives encounter every day, the lack of uniformity in cataloging complaint data is obvious and assured.

While DRA defends the generalized reporting requirements contained in the Proposed Rules, declaring that anything less than "[t]racking and reporting of *all* cramming complaints" would "cripple" the Commission's cramming enforcement efforts,⁹ history demonstrates otherwise. Even before the creation of the Complaint Information Management System ("CIMS") database, Commissioner Bohn heralded the Commission's past successes in prosecuting abusive behavior by carriers, with such enforcement "result[ing] in real penalties and changed behavior to the benefit of consumers."¹⁰ These successes demonstrate the potential effectiveness of the Commission's inherent investigative powers when combined with smaller amounts of *actionable information*, as opposed to incessant waves of unreliable and indiscernible data. Indeed, the availability of heaps of data does not translate to an increased effectiveness at preventing or detecting cramming, as evidenced by the rising number of wireline cramming complaints in spite of the ILECs' reporting of complaint information similar to that contemplated in the Proposed Rules. Moreover, as CTIA points out in its comments, the Commission has

⁸ *Id.*

⁹ DRA Comments at 2 (emphasis in original)(citing to DRA April 7, 2008 Opening Comments and DRA April 28, 2008 Reply Comments).

¹⁰ Decision 06-03-013. Commissioner Bohn's Concurrence on the Consumer Bill of Rights Decision at 10.

elected in similar circumstances to *not* adopt reporting requirements in light of concerns about the reliability of such data.¹¹

Not only are such generalized reporting requirements ineffective at achieving the Commission's goals, but they would be extremely cost-intensive to implement.¹² A number of commenters confirmed that carriers do not have a system in place to track complaints in the manner contemplated by the Proposed Rules and detailed the significant costs that would be required to implement such systems.¹³ In the last phase of the proceeding, CTIA estimated the initial implementation cost for the four largest wireless carriers to be \$39,000,000.¹⁴ Still more substantial are the ongoing costs to implement and operationalize the system, which Verizon Wireless described as falling into three broad categories:

- (1) [T]he increased time customer service representatives must spend asking customers questions necessary to categorize calls and obtain the information to be tracked;
- (2) [T]he increased time customer service representatives must spend inputting this information into a tracking tool; and
- (3) [T]he cost of training customer service representatives to meet these new obligations.¹⁵

CTIA estimates the ongoing costs of complying with the reporting obligations once the systems have been put in place at \$85,000,000 *every year*, just for the four largest wireless carriers in the state.¹⁶ This cost is grossly disproportionate to the value of the data that the Commission would receive.

¹¹ CTIA Comments at 20 citing the Commission LEP decision Decision 08-01-016.

¹² CTIA April 7, 2008 Comments at 9; CTIA Comments at 17-18

¹³ *See* Verizon Wireless Comments at 16-9; CTIA Comments at 16-18.

¹⁴ CTIA Comments at 17-18.

¹⁵ Verizon Wireless Comments at 16 (Note: Verizon Wireless described four categories of costs, with the last one being the cost to develop and deploy a new complaint tracking system).

¹⁶ CTIA April 7, 2008 Comments at 9; CTIA Comments at 17-18.

In contrast to this specific cost information, DRA's and other consumer groups' blithe assertions that carriers could simply "piggyback" a complaint tracking feature onto existing customer service platforms are not supported by any evidence and are frankly naïve. DRA and other similarly-positioned parties simply do not appear to appreciate the real costs of implementing such complex tracking mechanisms, or that these costs must necessarily be passed on to consumers through higher prices, sacrifices in service quality, or the elimination of the very service that the customer wants—namely, the ease of having their third party charges appear on their carrier's bill. Smaller carriers like Cricket and MetroPCS, which serve a customer base largely comprised of customers that are either ineligible or cannot afford service from a traditional post-pay wireless provider, would be the hardest hit. This would not serve the public interest since these providers' pay-in-advance and prepaid service models present little, if any, potential for cramming.

Rather than adopt a blunt, generalized reporting requirement, the Commission should allow parties time to confer and develop an intelligent, targeted system by which carriers can quickly identify and alert other carriers of potential cramming activity. Cramming is not only bad public policy, but it is also bad business since it results in bad customer relations and carriers having to incur additional costs to handle customer complaints. The Commission should focus its actions on stopping the behavior of a few bad actors, rather than merely getting reports about it.

In their opening comments, parties offered a variety of suggestions for achieving such goals. For example, CTIA, Cricket, MetroPCS and other wireless carriers support establishing a reporting protocol focused on swiftly alerting the Commission and other carriers to bad actors; Verizon Wireless suggests carriers submitting complaint protocols to the Commission for review

on a confidential basis; DRA suggests increasing training for CAB representatives and enhancing the CIMS database's ability to better track information; and UCAN suggests that CAB report informal complaint data to CPSD. Cricket and MetroPCS support establishing a Commission-sponsored workshop process to explore these and other alternatives to the generalized reporting requirements set forth in the Proposed Rules.¹⁷ In doing so, parties might discover areas of agreement where it was assumed none existed.¹⁸

Workshops would also allow parties to educate each other and exchange information on specific systems stakeholders employ to deter cramming. This is critical, since protocols tailored to fit individual business and service models are far more likely to achieve real results than a prescriptive “one-size-fits-all” approach¹⁹—a fact deftly illustrated by the entirely disproportionate deterrent effect that such rules would have on traditional post-pay models and pay-in-advance or prepaid models while nonetheless imposing similar significant costs.

III. SUBSTANTIVE CHANGES TO EXISTING CRAMMING RULES ARE OUTSIDE THE SCOPE OF THIS PROCEEDING AND ARE NOT SUPPORTED BY THE RECORD

Changes to the existing rules beyond evaluating the need for reporting requirements are outside the scope of this phase of the proceeding and should not be considered. As explained in numerous parties' opening comments, the adoption of cramming *reporting* requirements is the only outstanding issue that the full Commission left open for consideration in Decision 06-03-

¹⁷ AT&T also supports convening workshops on these issues. AT&T Comments at 13. In contrast to AT&T, however, Cricket and MetroPCS support limiting the focus of workshops to the reporting requirement (i.e., excluding substantive revision of the rules).

¹⁸ For example, Cricket and MetroPCS support UCAN's proposal to require CAB to report informal complaint data to CPSD and DRA's proposals for the extension of the CIMS database and providing additional training to CAB representatives.

¹⁹ As AT&T's comments explain, a “one-size-fits-all” approach to deterring cramming would almost certainly not result in the most efficient or productive measures for deterring cramming and have disparate impacts on different carriers.

013.²⁰ Reflecting extended deliberations based on a robust record, this decision was the result of a comprehensive evaluation and re-write of the then-existing rules. As Verizon notes in its comments, the full Commission—including the Commissioner currently assigned to this proceeding—wholly supported and voted for the current substantive cramming rules adopted in Decision 06-03-013.²¹ Moreover, Verizon and numerous other parties correctly point out that the ACR setting forth the new Proposed Rules offers no explanation as to why the substantive cramming rules require revision and is not grounded in any evidence in the record, potentially raising significant notice and due process issues.²²

In fact, at least for wireless carriers, the number of cramming complaints has continued to trend downward over the past few years.²³ This is true despite the fact that wireless subscribership has increased substantially over the same time period.²⁴ As numerous wireless commenters set forth in their opening comments, this decline in cramming activities in the wireless sector is a direct result of the industry’s implementation of effective best practices designed to deter and detect cramming activities.²⁵ While DRA and other consumer groups insist that carriers cannot be trusted to self-police their behavior, the data tells a very different story and, in fact, demonstrates the success of the industry’s self-policing activities. Indeed, the Commission has expressly recognized carrier’s significant incentives to deter cramming:

²⁰ Decision 06-03-013, mimeo at 92-94.

²¹ Verizon Comments at 4.

²² See Verizon Comments at 4-6.

²³ This trend is in contrast to landline service, which has seen an increase in cramming complaints. The decline in wireless cramming complaints also clearly demonstrates the error of CALTEL’s comment that the Commission’s key concern is “protect[ing] wireless customers from unauthorized third-party billing.” CALTEL Comments at 1.

²⁴ The number of wireless subscribers in the United States grew from 207.9 million in December 2005 to 285.6 million in December 2009 at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323> .

²⁵ Cricket/MetroPCS Comments at 5-7; CTIA Comments at 6-9; Verizon Wireless Comments at 4-9; Verizon Comments at 13.

“We agree ... that carriers have strong financial incentives to adopt significant security measures. We recognize that it is costly for carriers to resolve complaints, and reducing their complaint levels is to their advantage. Consequently, we doubt that a phone company would adopt a business model that easily allows a thief, armed only with a name and phone number, to place unauthorized charges on its customers’ phone bills. This model would work against the carrier’s own best interest.”²⁶

Importantly, none of the consumer group commenters attempt to explain how the specific changes in the rules would result in fewer instances of cramming. Instead, DRA, TURN and UCAN provide examples of past cramming schemes in an attempt to show that cramming is a serious problem for consumers. While Cricket and MetroPCS appreciate the gravity of cramming, DRA and the other consumer groups fail to draw any correlation between the cramming schemes cited and how the Proposed Rules would have prevented such schemes from occurring.

The Commission has already ruled that it “should not adopt extensive new rules solely on the basis of anecdotal evidence” and that “[p]rudent policy ... would seek to ensure that a regulatory response does not impose costs on carriers and their customers that outweigh benefits of reducing inappropriate behavior.”²⁷ Continuing in its decision revising General Order 168’s consumer protection rules, the Commission provided that “[t]argeted enforcement actions can stop bad actors, and targeted consumer education programs can provide consumers with specific knowledge they can use when making choices that best serve their telecommunications needs.”²⁸

²⁶ Decision 06-03-013, mimeo at 88-89 (footnotes omitted).

²⁷ *Id.*, mimeo at 32; Finding of Fact 12, mimeo at 150 (“Anecdotal evidence can prove valuable to the Commission in developing enforcement and education programs”) and Finding of Fact 13, mimeo at 150 (“Anecdotal evidence does not provide a basis for imposing wholesale regulations on an industry”).

²⁸ *Id.*, mimeo at 32-33.

For these reasons, the Commission should limit the scope of this phase of the proceeding to developing a targeted, efficient reporting requirement focused on identifying and alerting carriers to bad actors.

IV. TO THE EXTENT THAT THE COMMISSION DECIDES TO ADOPT A GENERALIZED COMPLAINT REPORTING REQUIREMENT, THE COMMISSION SHOULD EXEMPT PREPAID AND PAY-IN-ADVANCE PROVIDERS

As explained in Cricket and MetroPCS' opening comments, the pay-in-advance and prepaid models do not present the same potential for billing customers for unauthorized charges as more traditional post-pay wireless service models. The pay-in-advance nature of Cricket and MetroPCS' products make it impossible for customers to incur large, unexpected charges. For services provided on a monthly basis, customers are charged for services *to be rendered*. If a customer does not agree with a charge for service, the customer can simply choose not to pay the bill inasmuch as Cricket's and MetroPCS' customers are not subject to any term contracts for service (in contrast to more traditional post-pay service models). For customers that desire to make one-time purchases of individual products or services (e.g. a single ringtone), Cricket's and MetroPCS' customers do so by using their FlexBucket (Cricket) or MetroConnect (MetroPCS) account. These transactions occur instantaneously and only after a customer has affirmatively approved the transaction through a double opt-in authorization process. Customers have absolute control over whether to use their account to purchase products and services and if there are not sufficient funds in the account, the transaction is simply not completed, and that has no affect on the customer's underlying basic service. Again, as explained in their opening comments, this *de minimis* potential for cramming is borne out by the CIMS data, which provides that for the period of November 2008 to February 2010, MetroPCS registered one cramming complaint and Cricket registered none.

For the above reasons, if the Commission decides to adopt reporting requirements that require carriers to provide data on individual complaints, it should specifically exempt wireless prepaid or pay-in-advance services such as those offered by Cricket and MetroPCS.

V. CONCLUSION

Cricket, MetroPCS and the other wireless carriers have installed a number of best practices to prevent cramming. Nevertheless, DRA, TURN and other commenters advocating for an expansion of the anti-cramming rules have altogether declined to address the deterrent effect that these practices have had on cramming activities in the wireless sector. These parties have similarly failed to explain how DRA, CAB or CPSD are hindered in their attempts to request data from carriers regarding cramming activities or how the Proposed Rules would in fact prevent or deter cramming activities. In light of these procedural and substantive deficiencies, the Commission should decline to adopt the Proposed Rules at this time and consider conducting workshops to develop an efficient, targeted approach to identifying bad actors. In the alternative, if the Commission elects to adopt prescriptive anti-cramming rules, it should exempt prepaid and pay-in-advance services like those offered by Cricket and MetroPCS in light of the *de minimis* potential for cramming under such service models.

Respectfully submitted,

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Dated: April 9, 2010

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CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, I am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery St., Suite 800, San Francisco, California 94111-6533.

On April 9, 2010, I caused the following to be served:

**REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC. (U-3076-C) AND
METROPCS CALIFORNIA, LLC (U-3079-C)**

enclosed in a sealed envelope, by first class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address, and via electronic mail to all parties on the service list who have provided the Commission with an electronic mail address.

/s/
Judy Pau

Commissioner Bohn (Via U.S. Mail and Electronic Mail)
Administrative Law Judge Bushey (Via U.S. Mail and Electronic Mail)

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