



CONSUMER PROTECTION INITIATIVE

WORKSHOP REPORT ON

PROPOSED CRAMMING REPORTING

REQUIREMENTS

October 13, 2006

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I. Background

In Decision (D.)06-03-013, the California Public Utilities Commission (Commission) directed staff to hold a workshop that discusses how all carriers shall meet the statutory requirement of Public Utilities (P.U.) Code Section 2889.9 which states that carriers will be subjected to reporting requirements regarding their resolution of cramming-related complaints.¹ In Ordering Paragraph 7 of D.06-03-013, the Commission directed the staff: “Within 180 days of the issuance of this decision, staff shall hold a workshop to determine appropriate reporting requirements pursuant to P.U. Code § 2889.9. Afterwards, staff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.”

The Commission’s Consumer Protection and Safety Division (CPSD) and Telecommunications Division facilitated a series of two workshops in this matter. Commissioner Rachelle Chong presided over both workshops. Also in attendance was Commissioner John Bohn. During the first workshop on July 17, 2006, staff sought parties’ input in answering the following questions:

- I. What are “unauthorized charges”?
 - a. What are considered unauthorized charges?
 - b. When are unauthorized charges considered cramming?
- II. Who should report?
 - a. What is the role of the carrier?
 - b. What is the role of the billing agent?
 - c. Are there unique industry segment issues?
- III. What kind of information should be reported?
 - a. How can we attain consistency in data collection?
 - b. Which cramming complaints should be reported?
 - c. How can complaint resolution status be reported?

Parties either attended the workshops or listened in telephonically. Those in attendance for the first workshop included: Rhonda Johnson, Dick Fitzmaurice, and Brad

¹ See D.06-03-013, pages 92-93 and Ordering Paragraph 7.

Layouts of AT&T; Art Jimenez and Chris Witteman of the Commission's Division of Ratepayer Advocates (DRA); Steve Kukta of Sprint; Tina Armstrong, Bill Schulte and Mike Day of CTIA; Cindy Manheim of Cingular Wireless; Leon Bloomfield of T-Mobile; Kurt Rasmussen and Don Eachus of Verizon; John A. Gutierrez of Comcast; Latanya Linzie of Cox Communications; Sarah DeYoung of Caltel; Enrique Gallardo of Latino Issues Forum; Kirstin Diggs of OFC; Christine Maillaux of TURN; George Granger of Cingular; Michael Bagley of Verizon Wireless; and Patrick Rosvall of Small/Mid-sized LEC's; from the Commission's Telecommunications Division: Jack Leutza, Rosalina A. White and Risa Hernandez; from the Commission's Consumer Services and Information Division: Phil Enis; from the Commission's CPSD: Richard Clark, Jeanette Lo, Linda Woods, Duane Filer, and Steve Kadivar; from Commissioner Chong's staff: Robert Haga; from Commissioner Bohn's staff: Robert Lane.

At this initial workshop, participants provided some useful input and information, but it appeared there was significant confusion and questions about the scope of the "cramming" definition, the scope of the data to be reported, and whether the existing landline only rules for subscriber complaints reporting adopted in D.00-11-015 would still continue in light of the new cramming reporting requirement contained in D.06-03-013. On the latter issue, we clarify that in light of D.06-03-013, the Commission intends to propose to repeal in an upcoming proceeding on cramming reporting requirements the cramming reporting requirements adopted in D.00-11-015 because it imposes subscriber complaint reporting only on incumbent local exchange carriers and not other regulated voice providers such as Competitive Local Exchange Carriers (CLECs) or wireless carriers. As such, it does not treat similar voice service providers equally and puts an unfair burden on Incumbent Local Exchange Carriers (ILECs). We expect a new Commission decision to put forth a cramming reporting definition that will apply equally to all regulated voice providers and fulfill the requirements of P.U. Code § 2889.9(d).

Staff circulated a discussion paper on Cramming Reporting Requirements (see Appendix A - Discussion Paper) on August 11, 2006. A second workshop was held on August 21, 2006 to discuss the draft proposals in the Discussion Paper.

Those in attendance for the second workshop included: Tom Mahr, Michael Bagley, and Cheryl VerWoert of Verizon Wireless; Rita Whitmore and Cindy Martin of

SureWest; Bill Schulte and Mike Day of CTIA; Esther Northrup, Theresa Cabral and LaTanya Linzie of Cox Communications; John Gutierrez of Comcast; Joe Chicoine of Frontier Communications; Patrick Rosvall of Small and Mid-sized LEC's; Nelsonya Causby, Dick Fitzmaurice, Betsy Granger, Adrian Tyler and Brad Layouts of AT&T; Ed Feeley of Sprint; Susan Lipper of T-Mobile; Sarah DeYoung of CALTEL; Christine Mailloux of TURN; Kristin Diggs of CFC; Enrique Gallardo of LIF; George Granger of Cingular; Rex Knowles of XO; Kurt Rasmussen and Don Eachus of Verizon; Paul Phillips of Division of Ratepayer Advocates; Peter Casciato of Time Warner Cable; Margaret Tobias of Tobias Law Office; William Wallace of Verizon Wireless; from the Commission's Telecommunications Division: Chris Poschl and Risa Hernandez; from the CPSD: Steve Kadivar, Rudy Sastra, Jim Howard, Gaylee Adell, Linda Woods, Duane Filer, and Jeanette Lo; from Commissioner Chong's staff: Robert Haga; from Commissioner Bohn's staff: Robert Lane.

Participants filed written comments on September 8, 2006 (see Appendix B). Staff summarizes the participants' comments in this report and incorporates their suggestions, where we agree with parties' recommendations. In this report, staff proposes a definition of "unauthorized charges" and how they relate to cramming, clarifies when an inquiry becomes a "complaint," identifies what entities should report and why, and outlines its proposed cramming reporting requirements. This staff report also includes input from the offices of Commissioners Chong and Bohn.

II. "Cramming" and "Unauthorized Charges"

In proposing cramming reporting requirements, staff sought to define "unauthorized charges." P.U. Code § 2890(a) states that "[a] telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." In D.06-03-013, the Commission stated that "cramming is the placement of an unauthorized charge on a consumer's phone bill."² It was therefore instructive to outline what staff proposes can be considered as an unauthorized charge for cramming reporting purposes.

² D.06-03-013, p. 75

In defining what unauthorized charges include, staff was guided by references to cramming gleaned from the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and other state utility agencies. Ultimately, staff was persuaded by the FCC's guideline because it provides consumer protection from unauthorized charges as well as misleading or deceptive charges.

Parties including Cox Communications, AT&T California, The Utility Reform Network (TURN), Latino Issues Forum (LIF), Small and Mid-sized LEC's, Comcast, and Joint Wireless Carriers (JWC), provided comments on this issue. At the second workshop and from written comments, parties representing the telecommunications utilities were generally opposed to including "misleading or deceptive charges" in the definition, while consumer representatives were generally supportive. In addition, carriers such as Cox Communications, assert that the definition should focus on unauthorized products or services as opposed to unauthorized charges. AT&T states that the inclusion of misleading or deceptive charges into the definition would make it difficult for service representatives to decipher between a cramming and a general billing dispute, thus, having a potential to cause inaccurate reporting. The Small and Mid-Sized LECs also argue that inaccurate reporting could include billing disputes that contain some allegation that the customer was misled, which may not necessarily be cramming, and would impose unreasonable reporting burdens on carriers and result in an overly broad set of reported complaints. Consumer advocates such as the LIF, support the broader definition as less ambiguous than the narrow definition. TURN raises concerns that the danger in excluding a significant number of cramming complaints by adopting an overly restrictive definition outweighs any problem the carriers may have training its customer service representatives.

Staff recommends that in establishing cramming reporting requirements, the Commission adopt the FCC guidelines about cramming which states: "the practice of including, placing, or submitting unauthorized, misleading, or deceptive charges for products or services on an end-user consumer's telephone bill."³ In consumer bulletins, the FCC explains, "Crammers rely on confusing telephone bills in an attempt to trick

³ In the Matter of Long Distance Direct, Inc., Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314 (1998) at 315.

consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe.”⁴ The FCC website page on cramming explains how cramming occurs:

Cramming can also occur if a local or long distance company or another type of service provider does not clearly or accurately describe all of the relevant charges to you when marketing a service. Although you may have authorized the service, you did not understand or were misled about how much it would really cost.”⁵

Staff is persuaded by the FCC’s view, which includes misleading or deceptive charges, and proposes reporting requirements that capture this level of consumer protection. Staff therefore proposes that the following should be subject to cramming reporting: customer complaints seeking to remove or reduce unauthorized charges for products or services, including misleading and deceptive charges.⁶ This applies to communications and non-communications charges, and recurring and non-recurring charges that appear on consumer’s telephone bill placed on it by the carrier and/or a third party such as a billing agent.

While staff proposes that complaints regarding unauthorized charges stemming from misleading or deceptive charges be considered as reportable cramming complaints, staff recognizes that certain consumer billing complaints may not constitute cramming per se. In such situations, the issue often becomes the level of clear disclosure to the consumer of the charge. In such cases, whether cramming actually occurred is a factual issue.

With direct dialed telephone services, P.U. Code § 2890 provides that evidence that a call was dialed is *prima facie*⁷ evidence of authorization.⁸ Other authorized

⁴ “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>

⁵ The FCC explains how cramming occurs: “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>

⁶ See, D.06-03-013, GO 168, Part 4. at B.

⁷ “Prima facie” means “at first view” in Latin. It refers to evidence that is sufficient to raise a presumption of fact or establish the fact in question unless rebutted. <http://www.lectlaw.com/def2/p078.htm>

⁸ PU Code Section 2890(d)2(D) specifically states that “. . . In the case of a dispute, there is a rebuttable presumption that a unverified charged for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. . . .”

charges may include government-mandated fees, surcharges, or charges on a consumer's bill. Complaints about charges deemed authorized should not be reported.

Below are some examples that **would not** be considered cramming complaints for reporting purposes, some of which were provided by TURN:⁹

- A consumer purchases and authorizes a voice mail service but it does not work with the type of cellular service that the consumer has, and the consumer wants the charge for the voice mail service removed from his phone bill.
- A web-based "Slingbox" installed in a customer's home does not work. The customer is dissatisfied and wants the charge removed from her phone bill.
- Complaints about service quality
- Complaints about errors or billing mistakes
- Complaints about rounding of minutes/charges
- Complaints about government-mandated charges or taxes
- Complaints about charges incurred by another authorized user of the phone
- Charges incurred through a stolen or lost phone. Staff does not consider complaints over charges placed on a stolen phone as cramming complaints. Instead, such consumer complaints should be considered complaints over what was done with stolen property. Similarly, a complaint over charges placed on a lost phone is not cramming. Consumers bear the responsibility of notifying the carrier of a lost or stolen phone immediately, or may bear some responsibility for charges not placed by an authorized user before such a report with the carrier is filed.¹⁰
- Billing questions. Customer questions about the number of minutes of a specific call or call duration is not a cramming complaint. Staff considers these as billing inquiries until and unless the consumer elevates the inquiry to a complaint about the charges being unauthorized, misleading or deceptive.

⁹ TURN's Comments, pp. 5-6.

¹⁰ TURN comments at footnote 3, page 5: TURN disagrees with the sentence "Consumers bear the responsibility..." by stating that "...it is an incorrect interpretation of PU Code section 2890, contract law, and conflicts with legislation passed by the CA Assembly and Senate and currently waiting signature by the Governor."

- Complaints over charges where the customer is unhappy with the service and wishes to cancel.

Below are some examples that **would be** considered cramming complaints for reporting purposes.

- The inclusion of charges that are not part of the contract, allowed under the agreement entered into by the customer, or when the charges in question were not expressly authorized by the consumer.
- The inclusion of charges for calls that the consumer did not make, or for downloads that a consumer did not authorize (e.g. ringtones, screensavers, or wallpaper).
- The “upgrade” of an existing calling plan that would entail additional charges or higher fees, when that upgrade was made without the affected customer’s authorization.
- Unauthorized, additional fees or charges above and beyond the cost of a one-time service that the customer authorized through a toll free number (e.g. an entertainment or information service).
- Charges for telephone services or features that the consumer never ordered or authorized. (e.g. voice mail, caller ID, special service packages or fee-for-service charges such as 900 calls).
- Charges for a particular service after the consumer cancelled the service.
- Charges incurred when a consumer authorized a service, but was misled about the true cost of that service.

III. What is Considered as “Authorization”

Staff, in the Discussion Paper, proposed that the definition of authorization contained in D.00-11-015,¹¹ Attachment A,¹² be adopted:

1. Authorization Required: Prior to billing or causing to be billed any charge to a subscriber on a telephone corporation bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in P. U. Code § 2890(c).¹³ Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. With regard to direct dialed telecommunications services, evidence that a call was dialed is *prima facie* evidence of authorization.

2. Billing for Authorized Charges Only: Billing telephone companies may bill subscribers only for authorized charges. Billing agents and service providers may not submit, directly or indirectly, charges for billing through a billing telephone company that have not been authorized by the subscriber.¹⁴

Only a few comments were received from participants on what constitutes authorization. Cox contends that staff's proposed definition should reflect that a service provider must obtain authorization for products and services, and that subscribers may be billed only for charges corresponding to authorized products and services.¹⁵ Staff disagrees with Cox's proposal. D.06-03-013, at 74, takes the position that cramming is the placement of an “unauthorized charge on a bill,” not the charge of an unauthorized

¹¹ Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer, Attachment A, Page 1, Subscriber Complaint Reporting Rules.

¹² Subscriber Complaint Reporting Rules, page 1. Attachment A:

http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html

¹³ PU Code Section 2890(c) states “The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

¹⁴ D.00-11-015 - *Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer*, OP 1, Subscriber Complaint Reporting Rules, Attachment1, p.1.

product or service. The JWC argue that the definition proposed in the Discussion Paper is confusing and goes beyond the statutory definition.¹⁶ They propose that P.U. Code § 2890(d)(2)(D) be used.

Staff adopts JWC’s recommendation and agrees that the definition contained in the P.U. Code is clearer and more direct. Therefore, staff recommends that the definition of authorization contained in P.U. Code § 2890 (d) (2) (D), be used for cramming reporting purposes.

... “In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.”

IV. What is Considered a “Resolved” Complaint

Staff did not provide guidelines about what complaints would be considered “resolved” in the Discussion Paper. In comments, Verizon suggested that staff define what is or is not considered a resolved complaint. Staff agrees and proposes that the definition of “Complaint Resolution” in D.06-03-013, Part 4, be used in determining what is considered resolved for cramming reporting purposes. The section states:

“If a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user’s authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber’s bill.”

V. “Inquiry” vs. “Complaint”

At the workshop, staff sought to distinguish an “inquiry” from a “complaint,” in order to guide reporting entities in providing the Commission with consistent cramming complaint data. The Commission does not wish to receive data regarding inquiries that do not rise to the level of complaints.

TURN commented that the definition of “complaint” in G.O. 168 “should be

¹⁵ See Cox Communications Comments on page 4.

¹⁶ See Comments of the Joint Wireless Carriers, page 6.

sufficient to ensure that only complaints, not inquiries, will be reported.”¹⁷ Cox agrees and further recommends that¹⁸:

“...an inquiry can evolve into a complaint at some point, and does become reportable as a cramming complaint if and when the consumer expresses her objection to being billed for products or services not authorized by the consumer or otherwise requests the removal of charges associated with products and services not authorized by the consumer and such complaint is not resolved within 30 days of submission.”

The Small and Mid-sized LECs wrote that a complaint refers to a customer’s affirmative, unequivocal expression that a charge on the customer bill is unauthorized. By contrast, an “inquiry” is a more “examination into facts and principles or request for information about charges on bill, or about the terms and conditions of service.”¹⁹

Staff recommends that the definition of “complaint” in D.06-03-013 be used for cramming reporting purposes. Complaint is defined in D.06-03-013, Part 4, Rules Governing Cramming Complaints, (B) Definitions, as: “Any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed either directly or indirectly, through a telephone company.”²⁰ Both complaint and an inquiry can be initiated by the oral or written expression of a grievance. In contrast, staff views consumer contact regarding general questions about a charge on their bills as an “inquiry.” Although carriers and billing agents should track, record and resolve a consumer contact expressing general dissatisfaction with a bill, these inquiries are not reportable for cramming reporting purposes. Staff recognizes that an inquiry can evolve to a complaint at some point, and would become reportable if and when the consumer expresses his or her objection to a specific charge or denies a charge or otherwise request the removal or reduction of an unauthorized charge.

¹⁷ See TURN’s comments, p. 13.

¹⁸ See Cox’s comments, p. 12.

¹⁹ See Small and Mid-sized LEC’s comments, p. 5.

²⁰ D.06-03-013, GO 168, Part 4. at B, “Complaint” definition.

VI. Who Should Report and Why

Staff proposed during the workshop that billing telephone companies (both wireline and wireless carriers) and their billing agents including third party vendors are required to report cramming data to the Commission.²¹ The Legislature and this Commission have made it clear that billing telephone companies, service providers, and billing agents and any third parties involved in the billing “food chain” share in the responsibility that consumers’ phone bills only include authorized charges. D.06-03-013 states that, “P.U. Code § 2889.9 and § 2890 were enacted in order to deter cramming and clarify related rights and remedies available to California consumers. The Legislature directed that these laws be read together. The Legislature stipulated that P.U. Code § 2889.9 and § 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber’s phone bill. Thus the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.”²²

P. U. Code § 2889.9(d) states:

“The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers’ telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company provides to third parties, including affiliates of the billing telephone company.”

In D.00-11-015,²³ the Commission adopted the following definitions of a billing agent, service provider, and a billing telephone company:

Billing Agents: Any entity which provides billing service for service providers directly or indirectly through a billing telephone company.

Service Provider: The person or entity that originates the charge or charges that are billed to the subscriber.

²¹ CPSD Discussion Paper on Cramming-related Reporting Requirements, p. 14.

²² Id, p. 13.

²³ D.00-11-015, Attachment A.

Billing Telephone Company: A telephone corporation that bills a subscriber for products and services provided by a third party, including corporate affiliates.

In D.06-03-013, the Commission established new rules governing cramming complaints to cover wireline carriers, billing aggregators, resellers and wireless telephone service providers in a non-discriminatory and equal basis and defined a telephone company as:

Telephone company: A telephone company is any telephone corporation (as defined in P.U. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.²⁴

Just about all of the parties submitted comments on the topic of who should report and why. Parties raises issues in regards to duplicative complaint reporting, non-applicability of the rules, difference of opinion on interpretation of the existing rules on whether carriers must self report, and the lack of clarity on who should report such as billing aggregators.

Verizon raises the issue of possible duplicative reporting of complaints and proposes that the requirements should clarify that one or the other should report.²⁵

AT&T proposes that the Commission should clarify that billing telephone companies are not required to report cramming complaints received by their billing agents, including third party vendors.²⁶

The Small and Mid-sized LECs state that the reporting requirements, per 2889(d), should apply only to the billing of products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.²⁷

Comcast agrees with the Small and Mid-sized LECs and proposes that the reporting requirements should be limited to complaints associated with the billing and collection services that the billing telephone company provides to third parties, and affiliates of the billing telephone company in accordance with P. U. Code § 2889.9(d).²⁸

²⁴ D.06-03-013, GO 168, Part 4-Rules Governing Cramming Complaints, p. A-20.

²⁵ Verizon, p. 3.

²⁶ AT&T, p. 2.

²⁷ Small & Mid-sized LECs, p. 4.

²⁸ Comcast, p. 1.

JWC argue that P.U. Code § 2889.9 is focused on complaints to third parties including affiliates not to complaints regarding products and services provided by the carrier directly.²⁹ Additionally, they argue that expanding the reporting requirements beyond the scope defined by D.06-03-013 is not warranted because Part 4 of GO 168 dictates carriers expeditious complaint resolution obligation, within 30 days, the Mobile Marketing Associate (MMA) established a two tiered affirmative approach which is dependent of the charge for the service, the JWC have procedures in place to monitor and identify and to root out any “bad actors,” and the CPI decision includes education and reinstating the Regulatory Complaint Resolution forum.³⁰

DRA asserts that the Commission should demand the most accurate and comprehensive complaint reporting possible from the billing telephone companies, billing aggregators, and third party providers identified in P.U. Code Sections 2889.9 and 2890.³¹

TURN states that P.U. Code § 2889.9(d) requires each billing telephone company, billing agent, and company that provides products or services that are charged on bill to provide Commission with reports.³² Additionally, TURN requests that “billing aggregators” as an entity be required to report.³³ TURN points out that § 2889.9(i) provides Commission with authority to broaden reporting requirements to carriers' themselves.³⁴ Finally, TURN suggests that only those entities with direct customer contact or whose name may appear on a bill should be the ones to report.³⁵

LIF states that P.U. Code § 2889.9 and § 2890 established that an entity, either a carrier or billing agent, has the responsibility including reporting requirements. LIF believes it is untenable that a carrier or a billing agent will accept compensation for acting as a billing agent for a company, but will then be unable to identify it if the company commits a cramming violation. LIF points out that the Commission will not be

²⁹ Joint Wireless Carriers, p.1.

³⁰ *Id.*, p. 2-5.

³¹ DRA, p. 15.

³² TURN, p.3.

³³ *Id.*, p. 14.

³⁴ *Id.*, p.3.

³⁵ *Id.*, p. 14.

able to perform the investigations required in § 2889.9(e) if it is unable to identify the companies ultimately responsible for the cramming.³⁶

Staff agrees in part with Verizon that there could be an issue of duplicative cramming reporting but are unsure of the extent and as such do not believe that we should limit the reporting to either the billing telephone company or the billing agent. We do however agree that the consumer could call both the billing telephone company and the billing agent. The staff proposes that in order to address this issue the underlying cramming reporting data should be specific enough so that staff can identify those duplicates as further explained in the section Reporting Requirements and Contents. We agree with AT&T that the billing telephone company does not have to report complaints that other entities receive but emphasize that billing telephone companies must report cramming complaints they receive about their own products and services. Staff disagrees with Comcast, Small and Mid-sized LECs, and JWC that reporting should be limited to only third party or affiliates and stresses that the ultimate responsibility for resolving consumer cramming-related complaints is the billing telephone company. Staff understands that consumers may in fact call the billing aggregator or affiliate and the billing company may not be aware of that complaint and as result propose that those entities that get complaints must report. Staff agrees with the JWC that there are numerous initiatives to assist consumers but they are not intended to replace cramming-related reporting requirements. Staff agrees with DRA, TURN, and LIF that P.U. Code § 2889.9(d) requires each billing telephone company, billing agent, and company that provides products or services that are charged on bill to provide Commission with reports. The telecommunications industry has grown in such a way that a consumer's phone bill may now include charges for a growing variety of products and services and the quantity of entities involved with the delivery of that downloadable content charge on the consumer's phone bill has grown to such a extent that we must modify our existing cramming related reporting requirements in regards to who should report.

In determining who should report cramming-related complaints we propose that billing telephone companies (both wireline and wireless) and their billing agents including third party vendors are required to report cramming data to the Commission. In

³⁶ LIF, p. 3.

essence, those entities that get cramming complaints should be the ones that provide cramming-related complaint reports to the Commission.

VII. Reporting Requirements and Contents

D.06-03-013, Section 9.3, Adoption of Cramming Rules, specifies that staff is to “...propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than thirty days to resolve.”

A. Report Frequency

In the Discussion Paper, staff proposed requiring monthly reports of cramming complaints that are aged over 30 days from the date of receipt of the cramming complaint by the carrier or third party billing agent.

The JWC stated that “there has not been demonstrated need for monthly reporting or that such frequent reporting justifies the burden on either the carriers required to produce such reports or the staff who are required to digest the material and take appropriate action. Instead, the JWC recommend a measured approach which would provide that reporting be done on a quarterly basis. If, after a reasonable period of time, the data illustrates that there is a need for more frequent reporting (e.g., more complaints than anticipated are reported), then the frequency of the reports can be modified”.³⁷ Cox California Telecom, LLC, recommends quarterly reporting, calculated on a monthly basis: “Monthly reporting fails to strike the necessary balance between the Commission’s wish to have current data and the burden on reporting entities. With monthly reporting, the Commission would have data on a more frequent basis, but such data could not (and should not) be used in isolation for purposes of determining whether a carrier is engaged in cramming. The Commission should review data from several months to determine if a pattern of cramming is apparent. Monthly reporting is very

³⁷ “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P.8

burdensome on reporting entities, yet it does not provide any meaningful benefit to the Commission”.³⁸

TURN believes, “In any enforcement work, no matter the industry, speed is of the essence. It is rare that bad actors, who clearly know they are breaking the law and defrauding customers, will remain in business in any one place for very long. If the Commission has to wait over a month (the thirty day waiting period plus the reporting period) before it even received the statistics, then it will be much longer before the Commission staff can investigate a particular bad actor based on those statistics. If, instead, staff was receiving all cramming-related complaints called into the carrier on an ongoing basis, this could be extremely valuable in gathering enough data and evidence to move quickly to investigate and shut down a crammer”.³⁹

The LIF contends that “in order to fulfill the requirements of P. U. Code § 2889.9, the reporting period would have to be monthly. Section 2889.9(e) requires a Commission investigation whenever more than 100 complaints are received within *any* 90-day period. In order to accurately track whether 100 complaints are received within *any* 90-day period, a monthly reporting would be needed. A quarterly reporting period would hinder the Commission’s ability to ascertain if 100 complaints are received within any 90-day period-complaints might be stacked towards the end of one quarterly period and the beginning of the next period, would not reach the 100 complaint threshold in either reporting period, but would surpass the threshold in a 90-day period that straddled the reporting periods. A monthly reporting period would make the Commission’s work much easier. In addition, quarterly reports would not allow the Commission to timely respond to fly-by-night companies that crammed”.⁴⁰ Staff believes that the requirement in P.U. Code § 2889.9(e) that calls for Commission investigation whenever more than 100 complaints are received within any 90-day period applies to complaints received by the Commission (i.e. complaints received by the Consumer Affairs Branch).

Staff recommends monthly reporting because it will provide the Commission with timely information that enables early detection and action against those entities that are

³⁸ Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, P. 7

engaged in cramming activities. Staff believes that this benefit outweighs the burden to reporting entities of monthly reporting.

B. Report Contents

In the Discussion Paper, staff proposed that the reports should include:

- a. Monthly reports of cramming complaints over 30 days from the date of notice of the cramming complaint to the carrier or third party billing agent.
- b. Aging report of unresolved cramming complaints; within the following periods: a) 30 to 60 days, b) 60 to 90 days and c) over 90 days.

Staff proposed that the report should contain the following information:

1. the total number of consumer cramming complaints received for that month that remain unresolved after 30 days;
2. the name, address, and telephone number of each entity that is the subject of cramming complaints;
3. the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received;
4. the total number of cramming complaints, relative to each service provider, that remain unresolved from when the complaint was initially received, within the following time periods:
 - a. between 30 and 60 days;
 - b. between 60 and 90 days; and
 - c. beyond 90 days.

The reports should be due by the last business day of the following month. It is contemplated that carriers will have 270 days to put in place such reporting scheme from the date the Commission issues a final decision or resolution putting in place this reporting requirement, due to complexities expressed at the workshop as to changing customer service representative databases to accommodate this type of reporting at a state level.

The JWC state that “[we] agree that the first reporting requirement [the total number of consumer cramming complaints received for that month that remain unresolved after 30 days] proposed in the Draft Report is consistent with Ordering

³⁹ TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, pp. 12-13

⁴⁰ Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements,” dated September 8, 2006, P.2

Paragraph 7 of Decision 06-03-013 and, therefore is appropriate for adoption.” With regard to the second reporting requirement, which relates to the name address, and telephone number of each entity that is the subject of cramming complaints, the JWC state: “current systems are not designed to track this type of information or generate these types of reports. The JWC submit that for many carriers, meeting this requirement will only be possible because, as discussed above, the process they will use to identify the cramming complaints over 30 days will be manual. Specifically, some carriers’ customer care records do not list the third party vendors which provide various services for the customer. Rather it will list the carrier as the ‘responsible party’ for the service.’ ...’it will require an investigation of the customer’s billing records to identify the vendor which is associated with the charges being complained about. This task is complicated by the fact that many third party charges which appear on wireless bills may only appear for a month.”⁴¹ The JWC state that the third reporting requirement- reporting on the total number of subscribers billed (by working telephone number) by each entity for which cramming complaints were received- “appears to be beyond the bounds of the reporting requirements envisioned in D.06-03-013, but cannot be accommodated by the carriers’ customer care systems without completely overhauling the carriers’ systems.”⁴²

The Small and Mid-sized LECs took issue only with the third reporting requirement -- the total number of subscribers billed (by working telephone number) by each entity for which cramming complaints were received. They stated, “information may not be readily available in carriers’ billing systems regarding every entity against which a cramming allegation is made’ ...’carriers have no business reason to maintain figures regarding the subscribership of third-party entities who may generate charges on carriers’ bills. This reporting requirement should be eliminated”.⁴³

⁴¹ “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 8 & 9

⁴² Ibid P. 9

⁴³ “Comments of Small and Mid-sized LECs on Discussion Paper Addressing Cramming Reporting Requirements” dated September 8, 2006, Patrick M. Rosvall, Attorney for the Small and Mid-sized LECs. P.7

Cox did not take issue with reporting the four data points the Discussion Paper, but did offer several suggestions on how to rephrase the data points to ensure the data is relevant. Specifically, Cox suggested, “To determine the percentage of complaints per subscribers billed, the Commission should collect the number of complaints received for a given billing interval and the number of subscribers billed during that same billing interval. For example, a Billing Telephone Company invoices a subscriber in August, the subscriber does not submit a complaint until October 1 and the complaint is unresolved as of November 1. In this example, the reporting entity should report the complaint as being unresolved for the month of October under No. 1 [reporting requirement] and the reporting entity should report the total number of subscribers billed for the month of August. This would provide a proper comparison of complaints received and subscribers billed for a given billing interval.’ . . .’If the complaints and subscribers are not based on the same period of time, staff will not be able to properly calculate the percentage of complaints”.⁴⁴ Cox also recommended that the second reporting requirement -- identity of the entity that is the subject of the cramming complaint -- be revised to relate only to those complaints aged over 30 days.

TURN recommended that the final cramming reporting requirements require “Every billing telephone company, billing agent, and company that provides products or services that are charged on subscribers’ telephone bills shall create a calendar monthly summary report which shall include the total number of cramming-related customer complaints received . . . ”⁴⁵

The LIF stated: “It is untenable that a carrier or a billing agent will accept compensation for acting as a billing agent for a company, but will then be unable to identify it if the company commits a cramming violation. Carriers and billing agents should have the name, address, and telephone number of companies for whom they act as billing agents. It is fundamental that all of the contact information referenced in the “Contents of Monthly Cramming Complaints Report” on page 15 of the Discussion Paper

⁴⁴ Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, P. 7

⁴⁵ TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, p. 6

be included in the monthly reports”⁴⁶. DRA argued that “it is in the interest of the carriers as well as consumers that complaint tracking and reporting extend to all complaints, not just those unresolved for 30 days or longer, because even where the utility promptly resolves the complaint it is not just the utility conduct which is at issue here. P.U. Code § 2889.9(d) requires reporting where the product or service billed on the utility customer’s bill was sold by a third party vendor. There are two reasons to track complaints aged less than 30 days: 1) in order to identify bad actors, particularly here-today, gone-tomorrow vendors, as soon as possible; and 2) to make visible schemes where the amounts are small automatically refunded on customer complaints, but paid by a larger number of unsuspecting victims.” DRA further contends that in P. U. Code § 2889.9(d) “the California Legislature has commanded the Commission to: establish rules that require each billing telephone company, each billing agent, and companies that provide products or services that are charged on subscribers’ telephone bills, to provide the Commission with reports of complaints made by subscribers . . . There is no 30-day limitation written into the statute. In the absence of any time-limiting or other limiting adjectives applied to “reports of complaints” the statute must be read to require the reporting of all complaints regarding the billing for third party services. DRA believes that the Commission may contravene the letter and intent of P.U. Code § 2889.9(d) by inserting into the statute reporting requirements a time-limiting factor not contemplated by the Legislature.”⁴⁷

Staff finds the JWC position regarding the inability of carriers to identify the third party vendor associated with cramming complaints particularly troublesome. P. U. Code § 2890(2) states, in pertinent part, “Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following: (A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including taxes or surcharges, and a clear and concise description of the service, product, or other offering for which the charge has been imposed. (B) Include, or cause to be included, for each entity that charges for a product or service,

⁴⁶ Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements”, dated September 8, 2006, p.3

⁴⁷ DRA Comments, pages 9 through 11.

information with regards to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge...” If carriers are, in fact, including the name of the product or service provider on their customer bills, then identifying those entities in their monthly report to the Commission, while perhaps a manual process, should not be particularly problematic. This is especially true given the JWC assertion that “the number of cramming complaints which are not resolved in a thirty day time frame is expected to be very small.”⁴⁸

It is the Commission’s position that carriers that bill California consumers are responsible for controlling access to consumer telephone bills and, as such, they have an obligation to know who is placing charges on those telephone bills. To effectively fulfill its responsibility of monitoring and taking corrective action against those entities that cram California consumers, Commission staff must be able to identify those entities engaging in cramming activities. Further, to effectively prosecute crammers, Commission staff must be able to identify the consumers that have been harmed by those entities and be able to demonstrate a direct relationship between the crammers and parties they have harmed. Accordingly, staff proposes that the following items be reported monthly on unresolved cramming complaints aged over 30 days:

- 1) The date the reporting entity first received the complaint,
- 2) The name, address and telephone number of the entity that allegedly crammed a subscriber,
- 3) The aggregate dollar amount of the disputed charge(s) that are attributable to each entity that is alleged to have crammed a consumer , and
- 4) A calculation of the percentage of cramming complaints unresolved over 30 days when compared the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received.

The monthly reports are due to the Commission by the last business day of the following month. The following example is offered to ensure clarity and consistency

⁴⁸ “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 10

among reporting entities in calculating the percentage. Assume the monthly report is submitted to the Commission on the due date of May 30, 2007. The number of complaints that were received prior to April 30, 2007, that remained unresolved, would be reported to the Commission. To calculate the stipulated percentage, divide the total number of complaints aged over 30 days, disclosed in the May 30, 2007 report, by the total number of subscribers billed during the month of April 2007 (by working billing telephone number) by each entity for which cramming complaints were received.

Inclusion of the four data points above will achieve the following: a) provide the level of unresolved cramming complaints aged over 30 days, b) allow the Commission to calculate the relative aging of those complaints (30-60 days, 60-90 days, etc.), c) identify to the Commission what entities are engaging in alleged cramming of California consumers and d) place in perspective the volume of cramming complaints that remain unresolved over 30 days in relation to the total number of subscribers billed, as required by D.06-03-013.⁴⁹

It is contemplated that carriers will have 270 days from the date the Commission issues a final order putting in place this reporting requirement to establish such reporting capabilities, due to complexities the carriers described in changing databases to accommodate this type of reporting at a state level.

C. Record Retention

At the workshop, staff recommended the adoption of record retention similar to that reflected in D.00-03-020 (as modified by D 00-11-015)), with regard to specifying the information to be maintained concerning cramming complaints; but broadly applied to both wireline and wireless carriers and billing agents. Specifically, D.00-03-020 states that every billing telephone company should maintain for a period of three years accurate and up-to-date records of all customer cramming complaints made to or received by it for charges for products or services provided by the billing telephone company, a third party or its affiliates. Additionally, the Decision required every billing agent to maintain accurate and up-to-date records of all customer cramming complaints regarding charges

⁴⁹ D.06-03-013, Section 9.3 Adoption of Cramming Rules, specifies that staff is to "...proposes cramming-related reporting requirements that direct carriers to provide, among other items, the number and *percentage* of cramming complaints that take more than thirty days to resolve".

billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records retained should include information on all consumer cramming complaints involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records retained should also include all consumer cramming complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill.

D.00-03-020 required that retained records should include the following information:

1. The subscriber's name;
2. the subscriber telephone number and the unique subscriber identifier, if any;
3. the name of the service provider responsible for the charge complained about;
4. the name of the billing agent or billing agents, if any;
5. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
6. a description of the product or service billed;
7. the disposition of the dispute;
8. a record of the original subscriber authorization for the charge, if any;
9. the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider; and
10. The total number of telephone numbers billed by the billing telephone company or billing agents for each service provider.

The JWC objected to these proposed requirements as being inconsistent with the direction of D. 06-03-013 and, believes that if adopted as recommended by staff would be unduly burdensome and cost prohibitive. JWC states "it is hard to extrapolate, and indeed the staff Report does not even attempt to do so, a reporting requirement pertaining to cramming complaint not resolved in thirty days into a record retention requirement, with a detailed accounting of ten different items, for each and every cramming complaint received by the carrier...Moreover, there is no recognition in the Draft Report of the resources (in terms of man hours, computer system modification, and document retention) which will be required if carriers are required compelled (sic) to comply with such a detailed data collection and record retention requirement."⁵⁰

⁵⁰ "Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements", dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 10

Cox stated “The Discussion Paper proposes that Billing Agents and Billing Telephone Companies retain ‘the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider’. (Item No. 9). This requirement is equivalent to that adopted in D.00-03-020 and D.00-11-015, and yet neither of those decisions explains the basis for collecting such data. Nor does the Discussion Paper describe the purpose for collecting this data or how the Commission has or would use this data’ ...’Furthermore, the Commission should delete proposed requirements No. 9 and 10 because neither requirement would result in the collection of useful data. Capturing and retaining the total number of dollars billed and refunded and the total number of telephone numbers billed without any time limitation would be superfluous. To be meaningful, data retained should correspond to a given time period so the Commission can calculate relevant percentages’ ...’Staff and Commission should require Billing Telephone Companies and Billing Agents to retain records that would serve a purpose in the future. Staff and the Commission should avoid imposing unnecessary retention requirements that provide no benefit to the Commission or the reporting entity.”⁵¹

AT&T claims “it does not receive and thus could not retain ‘a record of the original subscriber authorization for the charge, if any’ for third parties for whom it bills or for affiliates for whom it bills, when subscribers purchase directly from AT&T California’s affiliates. Accordingly, AT&T California requests that item eight be revised to clarify it does not apply to products and services billed on behalf of third parties, including affiliates, when the subscriber orders service directly from the affiliate.”⁵²

According to TURN, “At a minimum, if there is an allegation of cramming that needs to be investigated by the Commission or law enforcement, carriers should be required to have that information on hand. TURN is assuming that it may be reasonable

⁵¹ Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, p. 9

⁵² AT&T’s “Comments on proposal Cramming Reporting requirement”, dated September 8, 2006, submitted by Brad Layous, Associate Director, State-Regulatory, p. 3

to require carriers to keep only those records of customers who have called in a cramming-related complaint.”⁵³

While not directly addressing the issue of what specific information should be retained, DRA expressed general support for more inclusive and comprehensive reporting and record retention guidelines. DRA believes “the Commission is ill-advised to deny itself, and other public agencies, and by extension the public itself⁵⁴ the very important tool of comprehensive complaint tracking and reporting. DRA itself uses complaint reporting in its analysis and defense of ratepayer interests,⁵⁵ and a limitation of that complaint reporting to complaints older than 30 days would compromise DRA’s ability to represent ratepayers.⁵⁶ DRA believes that the telephone utilities have much more advanced reporting capabilities than have been disclosed to the Commission.”⁵⁷

LIF stated in its comments that “as revealed by § 2889.9(e), the purpose of the cramming reporting program is so that the Commission may identify and investigate carriers or companies that have disproportionate numbers of cramming complaints, in order to enforce § 2890. The Commission will not be able to perform the investigations required in § 2889.9(e) if they are unable to identify the companies ultimately responsible

⁵³ TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, p. 6

⁵⁴ [DRA’s footnote] Section 2889.9(d) gives specifically to this Commission the duty of requiring and receiving 3d (sic) party complaint reporting. As noted above, accurate and comprehensive complaint reporting benefits not on CPSD, but the Commission as a whole, and may also be very helpful to the California Attorney General, district attorneys, and other public agency attorneys charged with protecting the public. DRA itself has legitimate information needs.

⁵⁵ [DRA’s footnote] DRA's use for data may differ slightly from CPSD's. DRA's experience indicates that data about sales and complaints in the "early stages" may be useful to DRA in spotting trends and understanding market behavior. Systemic conduct that harms consumers may be invisible in individual complaints, and sometimes even in single company complaints, but become apparent to DRA when repeated across a number of companies.

⁵⁶ [DRA’s footnote] Even (indeed, especially) when it comes to small amounts which are refunded on demand, comprehensive complaint reporting is crucial. If complaint reporting was limited to those claims unresolved after thirty days, or limited by amount, the Commission would completely miss fraudulent campaigns, perhaps for inexpensive text charges of \$.50 or \$1.00, where the carrier immediately refunds the charge. But for every refund, how many customers pay the \$.50 or \$1.00 rather than waiting in a phone queue for 20 minutes? DRA's point is that this is an undesirable practice by a carrier or a third party, but a small charge and a no-questions refund policy make it an almost undetectable practice.

⁵⁷ “Comments of the Division of Ratepayer Advocates on Workshop Issues Re Cramming Complaints Reporting Rules”, dated September 8, 2006, submitted by Chris Witteman, Staff Counsel, pp. 13-15.

for the cramming. It is fundamental that all of the contact information referenced in the “Contents of Monthly Cramming Complaints Report” on page 15 of the Discussion Paper be included in the monthly reports.”⁵⁸

The Commission intends to investigate and prosecute those providers of products and services that continually engage in placing unauthorized charges on consumers’ telephone bills. In order to do so, the Commission must not only be able to identify the entity that has engaged in this illegal behavior but must also be able to identify the consumers that have been harmed by that company. When a provider of products and/or services consistently engages in cramming of California consumers, regardless of the fact that the affected consumers are astute enough to recognize that they have received a credit for the unauthorized charge, the Commission can take action against those entities who attempted to bill the consumer for those unauthorized charges. The Commission should protect all crammed subscribers, including those that have had their complaint resolved within 30 days. Therefore, providers of products and/or services must retain cramming complaint information and be in a position to respond to staff data requests for the complaint details necessary to effectively investigate and prosecute cramming cases. Staff believes that data points 1 through 8 below are elements of data it needs to have available in order to combat cramming. That said, Staff proposes that data points 1 through 8 below be retained, to the extent they exist.

Data to be retained	Justification
1) The subscriber’s name	Identifies who was allegedly crammed. CPSD has an obligation to identify who may have been harmed by those entities engaged in cramming in presenting any investigation before the Commission.

⁵⁸ Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements”, dated September 8, 2006, p.3

<p>2) The subscriber's telephone number and the unique subscriber identification, if any</p>	<p>Identifies what telephone number was crammed and the unique identifier, if any. Ensures that the proper consumer is identified.</p>
<p>3) The name of the service provider responsible for the charge complained about.</p>	<p>Identifies who was responsible for initiating the unauthorized charge on the consumer's telephone bill and allows the Commission to direct any remedial action to the party responsible for the unlawful act.</p>
<p>4) The name of the billing agent or billing agents, if any.</p>	<p>Identifies how the provider processed the unauthorized charge and allows the Commission to potentially identify other California consumers that registered complaints with the billing aggregator, but not with the carrier.</p>
<p>5) The amount of the alleged unauthorized charge and the date the charge was incurred and billed.</p>	<p>The Commission needs to be able to quantify the amount of financial harm experienced by the consumer in the event an investigation results in an award of restitution and imposition of fines. The entity that processed the complaint is the best source of this information. Additionally, the complainant may not recall the specific amount in question, or may not retain documentation pertaining to the</p>

	complaint.
6) A description of the product or service billed.	Commission staff is obligated to identify, in investigation reports, the type of product or service that was being marketed by the crammer to determine the extent and nature of the violation.
7) The disposition of the dispute.	Commission staff needs to know how a discrete complaint was resolved to determine the extent of consumer harm. Additionally, in the event an investigation results in restitution, Commission staff needs to be able to offset customer refunds from the amount of restitution paid to complainants.
8) A record of the original subscriber authorization for the charge, if any. This requirement only applies to those entities that market the product or service directly to the subscriber.	Commission staff is obligated to ascertain whether charges are indeed unauthorized to demonstrate in investigation reports not only that a cram was alleged, but that, in fact, the subscriber did not authorize the charge. The only source for this documentation may be from the entity that initiated the charge.

VIII. Opt-Out Provisions

The Discussion Paper proposed an opt-out process to streamline cramming-related reporting. Parties generally supported the concept but questioned the need to

report at all. Some parties considered the process arbitrary, while others stressed the need for signature and verification.

At the workshop, staff recommended that the Commission consider the following opt-out provisions:

1. On a monthly basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the service provider is seeking the exemption from the monthly reporting requirements.
2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.

TURN supports the idea of an opt-out if the company's business plan essentially prevents the possibility of cramming or if a carrier or company has had no reportable complaints in the past; but emphasizes that the opt-out should require substantive explanation from carrier.⁵⁹ TURN proposes that the waiver must be accompanied by officer verification and an agreement to report complaints when received.⁶⁰

The JWC support the monthly opt-out but note that the carrier is not "opting out" or reporting, it is merely reporting a lack of reportable complaints. They also state that the annual opt-out lacks criteria and the process becomes arbitrary. They propose that if a carrier's reportable complaints remain below a *de minimus* level for a fixed period of

⁵⁹ TURN, p. 14.

⁶⁰ *Id.*, p. 15.

time, the carrier should be permitted a year long exemption from the reporting requirement.⁶¹

Small and Mid-sized LECs support the monthly opt-out. If a service provider has zero complaints in a given reporting period it should be permitted to submit a verified letter.⁶² They also support an annual exemption. If service provider had zero complaints the previous year it should not have to submit monthly “opt out” letter or any monthly documentation unless it receives a reportable complaint.⁶³

Comcast supports Small and Mid-sized LECs proposal to permit service providers with few or no cramming complaints to report on an exception basis.⁶⁴ Similarly, Cox supports the opt-out and recommends that service providers have the opportunity to opt-out on a quarterly and annual basis.⁶⁵

Parties generally supported the monthly and yearly opt out proposal but some disagreed on the frequency and level of complaints that would allow them to opt-out. Staff agrees with TURN that if a carrier or company has had no reportable complaints in the past they should be able to opt-out with company officer verification. Staff disagrees with the JWC and Comcast that a carrier may opt-out with a few or a *de minimus* level over a period of time because determining the level of *de minimus* may become arbitrary. As a result staff proposes that only those entities that have zero reportable cramming-related complaints are to be permitted to opt-out either monthly or annually. Staff agrees in part with Cox and the Small and Mid-sized LECs that entities be permitted to opt-out on an annual basis provided they did not have any reportable cramming-related complaints during the prior year.

In conclusion, staff finds that parties are agreeable to the initial proposal and continues to recommend the following opt-out provisions:

1. On a monthly basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the

⁶¹ Joint Wireless Carriers, p.11.

⁶² Small and Mid-sized LECs, p.3.

⁶³ *Id.*, p.3-4.

⁶⁴ Comcast, p. 1.

⁶⁵ Cox, p. 10.

Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the service provider is seeking the exemption from the monthly reporting requirements.

2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.