

The National Regulatory Research Institute



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June 3, 1999

The Federal Trade Commission
Office of the Secretary
6th Street and Pennsylvania Ave., Room 159
Washington, DC 20580

Re: FTC File No. R611016-Pay-Per-Call Rule Review; Request for Comment
Regarding General Questions and Questions on Proposed Specific Changes

Dear Sir/Madame:

We understand that this docket remains open until June 4 and we wish to provide the following relevant National Regulatory Research Institute report, *An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related-Resources*, by Francine Sevel, Ph.D.

Please feel free to contact me if you have any questions regarding the report.

Sincerely,

Francine Sevel

Francine Sevel, Ph.D.
CC: Eileen Harrington

The National Regulatory Research Institute

An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related-Resources

(Prepublication Version)

June 1999

By Francine Sevel, Ph.D.

with material from:

The Federal Communications Commission

The Federal Trade Commission

The New York Public Service Commission

The Public Utilities Commission of Ohio

The Washington Utilities and Transportation Commission

The State of California

The State of Vermont

The Coalition to Ensure Responsible Billing

The United States Telephone Association

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TABLE OF CONTENTS

| | |
|--|-----------|
| Foreword | v |
| Chapter 1: Introduction | 1 |
| Overview of the Problem | 1 |
| Significance of the Problem | 7 |
| The Complaint-Handling Process | 9 |
| Chapter 2: Federal and State Action | 15 |
| Jurisdictional Boundaries | 15 |
| Federal Action | 16 |
| The Federal Communications Commission | 16 |
| The Federal Trade Commission | 17 |
| State Action | 19 |
| Enforcement Actions of State Attorneys General | 19 |
| Other State Mitigation Actions | 24 |
| Penalties and Enforcement | 30 |
| Authorization and Verification | 31 |
| Consumer Liability | 32 |
| Billing Issues | 33 |
| Consumer Education | 34 |
| Chapter 3: Industry Action | 37 |
| Industry Association Action | 37 |
| Local Exchange Carrier Action | 40 |
| Chapter 4: Policy Implications | 45 |
| Chapter 5: Recommendations | 51 |

Chapter 6: Examples of State Legislation 59
California
Vermont

Chapter 7: Industry Standards
The Coalition to Ensure Responsible Billing
The United States Telephone Association

Chapter 8: Examples of Consumer Education Materials
The Federal Communications Commission
The Federal Trade Commission
The Public Utilities Commission of Ohio
The New York Public Service Commission
The Washington Utilities and Transportation Commission

FOREWORD

This publication is designed primarily for state public utility commission consumer affairs staffs who are in the process of addressing the cramming problem. The purpose of the publication is to present an indepth analysis of the issue and compile a representative, as opposed to an exhaustive, set of resources to guide consumer affairs staffs who are in the process of:

- Drafting Consumer Protection Policies and Legislation Regarding Cramming
- Writing Speeches Regarding Cramming
- Briefing Members of Other Governmental Branches
- Developing Interorganizational Coalitions to Address Telecommunications Fraud
- Developing Consumer Bills of Rights
- Writing Press Releases Regarding Cramming and Briefing the Media
- Developing Consumer Education Materials About Cramming

The publication exposes consumer affairs professionals at state and federal public utility commissions, as well as in the industry, to a variety of perspectives, actions, and activities regarding cramming.

There are a number of secondary audiences and purposes of the publication. The publication can be used by telecommunications policy analysts drafting policy or legislation or simply seeking a national perspective on the issue. The publication can serve as a background piece for new commissioners or other newly elected government officials. The publication is also designed as a background resource that consumer affairs and public information staff could give to the media or other external stakeholders, including consumer advocacy groups such as AARP, seeking a broad range of information regarding various aspects of the nature and scope of the cramming problem.

CHAPTER ONE

INTRODUCTION

Overview of the Problem

Cramming—the practice of placing unauthorized charges on a consumer's local telephone bill—is a new twist on an age-old problem of billing consumers for goods that they did not order, authorize, receive, or use and an issue that became a significant regulatory, legislative, and industry concern during 1998. In fact, the Federal Communications Commission (FCC) reports that Disputed Telephone Billing and Service was their National Call Center's (NCCs) most frequent consumer issue during the period of October 1, 1998 through March 31, 1999, and questions about Telephone Charges on Bill was the fourth consumer issue, and Telephone Cramming was their sixth.¹

Similarly, the National Fraud Information Center received 105 cramming reports in 1997 and 2,734 in 1998, plus hundreds of additional calls which did not culminate in a report.²

In the last year, many state Attorneys General have also been beset with cramming complaints. As an example, in 1998, cramming was the fifth largest complaint category in the State of Illinois.³ As a result of the rise in cramming complaints, at least thirteen Attorneys General (CA, ID, IL, MS, NJ, NY, NC, OH, OR, PA, TN, VA, and WI)

¹Federal Communications Commission, "Federal Communications Commission, National Call Center, Top 30 Consumer Issues," as downloaded from <http://www.fcc.gov/cib/ncc/top 50.html>.

²The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review, March 10, 1999, 2, as downloaded from <http://www.ftc.gov/bcp/adcon/900rule/comments2/ncl.htm>.

³Comments of the National Association of Attorneys General Telecommunications Subcommittee of the Consumer Protection Committee, In the Matter of the Pay-Per-Call Rule Review, Before the Federal Trade Commission, 2.

have filed twenty-seven lawsuits and eight Assurances of Voluntary Compliance Against providers and sometimes their bill aggregators.⁴

In their Comments to the Federal Trade Commission (FTC) regarding the Pay-Per-Call Rule Review, the National Consumers League describes the problems of the current telephone billing structure which allows cramming to occur:

At the root of all the pay-per-call and cramming complaints is this simple fact: all that is needed to place unauthorized charges on a consumer's phone bill is the person's telephone number. Phone numbers can be captured through Automated Number Identification when someone dials the telephone from the consumers' home or place of business, harvested from contest entry forms, marketing lists and other materials, or obtained directly from the telephone book. It is not necessary for the consumer to actually make a call, though some victims are lured into unwittingly dialing numbers that result in charges. In many cases there is no ability to block the services to prevent such charges.

As a result, consumers have lost control of their telephone bills. If the competitive marketplace for telecommunication services is to flourish and benefit consumers, people must regain control of their telephone bills and the potential for fraud must be eliminated.⁵

In the last year, many state Attorneys General have also been beset with cramming complaints. As an example, in 1998, cramming was the fifth largest complaint category in the State of Illinois.⁶ As a result of the rise in cramming complaints, at least thirteen Attorneys General (CA, ID, IL, MS, NJ, NY, NC, OH, OR, PA, TN, VA, and WI) have filed twenty-seven lawsuits and eight Assurances of Voluntary Compliance Against providers and sometimes their bill aggregators.⁷

⁴Ibid, 2.

⁵ Ibid., 3.

⁶Comments of the National Association of Attorneys General Telecommunications Subcommittee of the Consumer Protection Committee, In the Matter of the Pay-Per-Call Rule Review, Before the Federal Trade Commission, 2.

⁷Ibid, 2.

Often cramming is associated with “free” 1-800 calls, particularly those that mysteriously become 1-900 calls. Although most cramming schemes occur through the use of an 800 number, others are initiated by contests or sweepstakes or mechanisms such as:

- Deceptive 800 Number Calls
- Contest Entry Forms
- Direct Mail Sweepstakes
- “Instant” Calling Cards
- Pay-Per-Calls
- International Calls
- “Free Minutes” Deals

Still twist in the cramming problem is found in the rise of complaints from customers who are unaware that they are being charged for both a long distance call and a pay-per-call. Perhaps, one of the most creative examples is found in the *State of Wisconsin v. Top Communications, Inc.*⁸ The defendant was charged with violations of state deceptive practice laws by placing fictitious employment advertisements in the newspapers. The advertisements listed an 806-telephone number to call for information on clerical employment. Callers received a prerecorded message and a charge of \$20.00 was unknowingly placed on their telephone bills. Over a two-year period, the defendant reported more than \$7.8 million in commissions paid on calls to the 806 numbers.

Cramming schemes run the gamut from a one-time charge for entertainment services crammed into an unsuspecting consumer’s phone bill to unauthorized recurring monthly charges. Recurring monthly charges usually fall into one of two categories:

⁸*State of Wisconsin v. Top Communications, Inc.*, No.95-CV-200, Cir. Ct., filed January 1, 1997, as cited in *Ibid*, 10.

- Club memberships.
These include psychic clubs, personal clubs, and travel clubs.
- Telecommunications products or service programs.
These include voice mail, paging, and calling cards.
- Charges only identified as “monthly fee” that appear on a recurring basis.

Examples of telephone-billed fraud reported to the National Fraud Information Center include the following:

- A Michigan man received bills totaling \$386 for 800 number calls never made. When he called the company listed on the bill, he got a recorded message saying there would be a \$5 per minute charge to dispute charges.
- A North Carolina woman’s thirteen-year-old daughter called an 800 number listed in a magazine ad for a music hotline. The call was switched to an international number and resulted in a \$1,200 phone bill.
- A Massachusetts woman who had a 900-number block on her phone received a bill for 900-number calls that she had never made.
- A Wisconsin man received a calling card that he had never requested. He destroyed it and called the company to cancel the card, but he was still billed for the card.⁹

Still, other examples of cramming occur through the use of deceptive and/or vague descriptions of fraudulent charges. The National Consumers League received complaints regarding fraudulent billing practices associated with the following terms:

- “monthly fee”
- “call manager”

⁹The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review, 13-14.

- “basic access”
- “monthly service fee”
- “min use fee”
- “special plan”
- “800 service

Despite the fact that cramming cases involving individuals are the most publicized cases, individuals are not the only victims. Businesses, school districts, law firms, and dedicated fax lines have also been targeted.¹⁰

Moreover, results of the Public Utility Commission of Texas survey of 658 randomly selected customers who had written to the Office of Customer Protection between September 30, 1997 and June 30, 1998, revealed a high percentage of cramming victims are victims of multiple offenses with sizable charges:

Forty-four percent said in total, they were billed between \$11 and \$50 for the unauthorized charges, while 25 percent said they were billed between \$51 and \$100, and 21 percent said more than \$100.¹¹

In the cramming incidents reported to the National Fraud Information Center during the first six months of 1998, the average amount in dispute was \$42.¹² Moreover, the charges can add up to considerable sums since most of the fraudulent charges are recurring on a monthly basis and customers often do not notice them right away.

¹⁰Lori M. Rodgers, “First Slamming, Now Cramming,” *Public Utilities Fortnightly*, October 1, 1998, 62-64.

¹¹ Pennsylvania Public Utility Commission, *Interim Guidelines for Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Charges to the Customer's Telecommunication Service Provider and Unauthorized Charges Added to the Customer's Bill*, Docket No. M-0098, 1998, 2.

¹²The Case of the Phantom Phone Charges,” Testimony of the National Consumers League to the Senate Permanent Subcommittee on Investigations, Presented by Susan Grant, National Fraud Information Center, 2.

Still other consumers have faced bills for hundreds, even thousands, of dollars due to unauthorized pay-per-call and other telephone services. As an example, the Ohio Consumers' Counsel intervened in behalf of a consumer who faced a bill for \$1,500 in 900-number calls to Hong Kong that the consumer had never made.¹³ The complexity of the problem is heightened by the fact that in approximately forty states consumers can be disconnected from their local service if they fail to pay these charges¹⁴.

A third party was involved In the majority of the cramming complaints investigated by the Pennsylvania Public Utility Commission's Bureau of Consumer Services (BSC).¹⁵ Here, the interexchange resellers (IXCs) or information services provider uses a billing clearinghouse or a billing aggregator that has a billing contract with the local exchange carrier (LEC). For both the customer and the intake representative investigating the cramming complaint, these billing layers add to the complexity of the situation since the billing aggregator also has to be contacted to question the charge.

The complaint handling process is further complicated by the fact that many customers cannot identify what the charge is or whether it or not it originated within the state. The former is evidenced by the fact that many customers still complain to the Pennsylvania BSC after the charge has been removed or credited.¹⁶

¹³Comments of the Ohio Consumers' Counsel in the Matter of Pay-Per Call Rule Review, before the Federal Trade Commission, 1, as downloaded from: <http://www.ftc.gov/bcp/adcon/900rule/comments2.ohio.htm>.

¹⁴Ibid.

¹⁵ Pennsylvania Public Utility Commission, *Interim Guidelines for Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Charges to the Customer's Telecommunication Service Provider and Unauthorized Charges Added to the Customer's Bill*, 2.

¹⁶Ibid, 3.

As indicated by Table 1, confusion over charges billed was the number one cramming complaints received by the National Fraud Information Center during November 1998.¹⁷

Table 1
Breakdown of Cramming Reports
National Fraud Information Center
November 1998

| Category | Percentage of Complaints |
|-------------------------------|--------------------------|
| Unclear What Charges Were For | 50% |
| Voice Mail | 18% |
| Long Distance Monthly Fee | 13% |
| Miscellaneous | 11% |
| Calling Cards | 08% |

As described later in this report, in Chapter 2: Federal and State Action, the need for clear, conspicuous charges is clearly voiced by the majority of the federal and state agencies. Moreover, the best practice guidelines of both the United States Telephone Association (USTA) and the Coalition to Enforce Responsible Billing (CERB) also echo a need for clear and conspicuous charges.

Significance of the Problem

As indicated by Table 2, in the past year, the concerns of state and federal regulators, legislative officials, consumer advocates, utility and billing companies and their related associations, have been fueled by prevalence data such as the following:

¹⁷The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review.

Table 2
Consumer Complaint Prevalence Data¹⁸

| Agency | Statistics |
|---|--|
| California PSC | Prosecuted 2 carriers in 1998, one carrier had approximately 300,000 victims, the other had approximately 40,000 victims; 10 other cases turned over to DAs. |
| FCC | 163 cramming complaints for 1997; 4588 for 1998 ¹⁹ |
| Florida PSC | Investigated and closed 1,853 cases in 1998; total savings to consumers were \$81,439.61. |
| FTC | 10,000 cramming complaints from September 1997 to December 1998 ²⁰ |
| Georgia PSC | 273 cramming contacts from February 10, 1998 through December 1998. |
| Illinois CC | 735 cramming complaints in 1998 |
| Massachusetts PUC | Massachusetts tracked cramming since October/November. The total of their cases through 1/1/99 was 201; total inquiries=289. |
| Michigan PSC | Up to 20 complaints per day ²¹ |
| National Fraud Information Center ²² | 105 cramming cases in 1997; 2,734 in 1998. |
| North Carolina PUC | 272 cramming complaints, as of October 12, 1998 |

¹⁸Unless otherwise noted, statistics for the various state public utility commissions listed below were supplied by the respective state public utility commissions.

¹⁹The statistics for the FCC, Ohio, and Washington were supplied by the Florida Public Service Commission.

²⁰"FTC Files Fourth Action to Combat Telephone Bill Cramming," Press Release of the Federal Trade Commission, December 23, 1998.

²¹Lori Rodgers, 63.

²²The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review, March 10, 1999, 2.

| | |
|------------------------|--|
| Ohio PUC ²³ | 3,268 cramming complaints in 1998; 388 for the first quarter of 1999 |
| Washington UTC | 10 cramming complaints for 1997; 180 for 1998 |
| Wisconsin PSC | 204 complaints for the third quarter of 1998. |
| Wyoming PSC | 84 complaints (5.3% of total complaints) through October 1998. |

Although it can be argued that not all consumer complaints are substantiated, most consumer affairs staff would agree that reported complaints represent only a small portion of actual complaints. Moreover, with regard to cramming, prevalence data is often skewed by the fact that many consumers are unaware of the fact that the problem is occurring; others may be aware of the problem's potential but are unable to decipher the cryptic language of the telephone bill; and still others are aware of their victim status but are unable or unwilling, due to time constraints and/or other factors, to navigate the sea of utility complaint processes, such as 1-800 numbers, automated answering systems, call transferring, busy signals, and being placed on hold. Moreover, if the unauthorized charge is inconsequential, for many consumers, recovery of the small amount may not be worth the transaction costs. Inconvenient daytime complaint handling hours may further deter other consumers from logging their complaint or attempting to recover unauthorized charges.

Still other customers who are successfully able to resolve cramming issues with the utility or billing company may not bother filing a complaint with the commission.

The Complaint-Handling Process

Consumers who are "lucky" enough to identify cramming charges, often wish that they had never discovered the problem. Unfortunately, many consumers have found that there are a myriad of problems associated with the process of lodging a cramming

²³ Complaint statistics include complaints to the PUC, the Ohio Consumer Counsel, and the Ohio Attorney General.

complaint. The National Consumers League, in their testimony to the Senate Permanent Subcommittee on Investigations, described some of the problems associated with disputing unauthorized phone charges:

Once consumers discover they've been crammed, their problems are only beginning. Following the directions on the bill, they call the number provided on that page for questions. This connects them either to the crammer or a billing aggregator acting on its behalf. However, many consumers report being left on hold for inordinate amounts of time, getting incessant busy signals, or reaching only a recorded answering service.

If they do manage to connect to a live customer service representative, they are often lied to, abused or referred to someone else. They are told that they authorized the service when they did not, and presented with documentation that is fabricated, such forged signatures or doctored tape recordings. Sometimes their requests for documentation are simply refused.Customers report that they are threatened that their phone service will be cut off and their credit will be ruined if they refuse to pay the disputed charges. Sometimes they are sent from one company to another. All affiliated in some way with the crammer and each denying responsibility.

If the company agrees to credit the consumers' account, it may be for only some and not all of the charges that have accrued. Or the company may promise a credit, and never make it. And if the charge is removed one month, it may pop up again on the next month's bill, requiring the consumer to go through the dispute process all over again.²⁴

Clearly, the process of lodging a complaint against a service provider can be a very frustrating and futile experience. It is understandable that the difficulties and abuses associated with the complaint-handling process could easily deter consumers from seeking relief for unauthorized charges, particularly relatively small charges. Unfortunately, the reluctance of consumers to put themselves through the myriad of problems associated with the complaint-handling process is in all likelihood a factor that motivates "bad actors" to cram consumers.

²⁴"The Case of the Phantom Phone Charges," Testimony of the National Consumers League to the Senate Permanent Subcommittee on Investigations, Presented by Susan Grant, National Fraud Information Center, July 23, 1998, 4-5, as downloaded from: <http://www.natlconsumersleague.org/cram.htm>

Similarly, in their comments to the FTC regarding the Pay-Per-Call Review, the Florida Public Service Commission (FPSC) also notes the difficulties associated with resolving billing disputes:

For example, the consumer who places a call to the displayed local or toll-free telephone number would not expect to receive a busy signal for days on end or to get no answer even if the call rings through. Based on the FPSC's experience, as well as numerous experiences reported by consumers, attempting to reach entities, who are currently listed on telephone billing statements as a point of contact for billing inquiries, has been very difficult, or sometimes totally impossible.²⁵

The need to improve the complaint-handling process is recognized by both state public service commissions and local exchange carriers (LECs). The FPSC advocates addressing the problem by establishing minimum service standards for the complaint-handling process:

To increase a consumer's chances of making contact with the entity for whom the local or toll-free telephone number is provided, standards need to be defined. For example, standards to define call completion expectations (what percentage of consumers' calls should result in an answer by a live person on the first attempt) or whether a recording device is acceptable. If a recording device is acceptable, how much time should pass before the consumer receives a follow-up call from the servicing entity? If service standards are not imposed, the FTC will have no viable means for enforcing its requirement that customers are or are not able to readily obtain answers and unscrupulous vendors will use their own standard to argue what "readily obtain answers" means. In most cases, a consumers' and vendors' perspective regarding this matter will not be in harmony. It is likely that some vendors will take advantage of a consumer's impatience and frustration, knowing that the consumer may simply give in and pay for the unauthorized charge. If this happens, the purpose and intent of the proposed Rule may be significantly diminished²⁶

²⁵Comments of the Florida Public Service Commission, in the Matter of Pay-Per-Call Rule Review, Before the Federal Trade Commission, 4, as downloaded from: <http://www.ftc.gov/bcp/acon/900rule/comments2/florida.htm>.

²⁶Ibid.

The Tennessee Regulatory Authority Tennessee has mitigated the problem by giving the Division of Consumer Services, not the consumer, the responsibility for initially interacting with the LEC to resolve the cramming complaint. Upon receipt of a cramming complaint, the Division of Consumer Services will immediately contact the company in question on behalf of the consumer. If the company cannot verify that the service was indeed authorized by the consumer, the charge is usually removed. Indeed, a one-stop complaint-handling process should encourage consumers to lodge complaints against market abusers.

GTE has also taken steps to reduce customer dissatisfaction with the complaint-handling process. GTE handles consumer complaints by a three-way call involving a GTE representative, GTE's billing customer, and the end-user. If the call does not resolve the complaint to the end-users satisfaction, GTE will immediately remove the charges from the end-user's bill.

Pacific Bell has addressed the complaint-handling process by establishing a new call center: "Third-Party Billing Center" for California customers. Here 100 trained consumer representatives are dedicated as advocates and representatives of consumers to assist consumers with third-party billing issues.

Indeed, state and LEC actions to improve the complaint-handling process should encourage consumers to seek justice by lodging complaints against "bad actors" and hopefully, mitigate the cramming problem. As federal and state policymakers begin to move forward with actions to mitigate cramming, it will be important that they begin to address the issue of the problems associated with the complain-handling process. Policymakers should consider the following recommendations for improving the complaint-handling process

- Require all entities involved in the complaint-handling process (the LECs, the billing clearinghouses, and the billing enmities) to have adequately staffed 1-800 numbers that are devoted exclusively to cramming issues.
- Require all entities involved in the complaint-handling process to have evening and weekend hours in which a customer can lodge a complaint.

- Require all entities involved in the complaint-handling process to do follow-up consumer satisfaction surveys to determine if their cramming complaint was adequately resolved.
- Develop call completion standards and for all entities involved in the complaint-handling function. Assess penalties for entities who do not meet the call completion standards.
- If sufficient resources are available, require the commission's Division of Consumer Services to initially intercede on behalf of the consumer and interact with the LEC or the billing aggregator to resolve the cramming complaint.
- Inservice training of commission intake staff to ensure that they have expertise in all aspects of the cramming problem.
- Develop training-the-trainer workshops for community-based organizations to train consumers regarding how to navigate the complaint-handling process.

CHAPTER TWO

FEDERAL AND STATE ACTION

Jurisdictional Boundaries

Clearly, both federal and state agencies have devoted considerable efforts to combating cramming. The jurisdictional separation of complaints is described below:

- State regulatory commission: calls placed to a location within the state or telephone services provided within the state.
- FTC: charges on the telephone bill for nontelecommunications services (an example would be psychic hotlines).
- FCC: charges on the telephone bill for interstate or international calls or services; jurisdiction over common carriers.

Unfortunately, jurisdictional boundaries often interfere with an agency's ability to enforce cramming rules. Lawrence E. Strickling, Deputy Chief of the FCC Common Carrier Bureau addressed some of the problems associated with jurisdictional boundaries in his testimony in the Hearing on Cramming and Slamming before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, United States House of Representatives:

...the Commission's [FCC's] jurisdiction is directed at common carriers. Conversely, there is some question as to the extent of the FTC's jurisdiction with respect to common carriers. As a result of this jurisdictional split, some of the players in this industry—the bad actors—are attempting to play both sides against the middle. The two agencies are committed to working together to ensure that no company uses this limitation to evade the law. Indeed, the agencies have worked informally to share information and forward complaints where violations appear to cross these jurisdictional boundaries.

...Congress can help us to achieve this goal by ensuring that both the FCC and the FTC have broad jurisdiction over all of the entities perpetuating this fraud on consumers. Specifically, Congress should extend the jurisdiction of the FCC to reach the practices of the responsible billing clearinghouses and service providers when

unauthorized charges appear on consumers' local telephone bills. At the same time, Congress should clarify that the FTC has jurisdiction to ensure fair advertising and marketing practices, whether or not the entity responsible for cramming is a common carrier.²⁷

Federal Action

Federal Communications Commission

In Fall of 1998, the FCC issued a Notice Proposed Rulemaking (NPRM) to implement "truth-in-billing" guideline to ensure that consumers can understand the charges on their local phone bill.²⁸ In the Notice, the FCC sought comments on how to ensure that customers receive "thorough, accurate, and understandable bills from their telecommunications carriers." The purpose of the NOPR was to begin a dialogue on how carriers can best provide consumers with clearer and more reliable information. The FCC also proposed the following "truth-in-billing" guidelines:

- Bills should be organized clearly and highlight new charges or changes in service.
- All charges should be described fully and service providers should be clearly identified.
- Bills should clearly and prominently disclose sufficient information for consumers to inquire about charges on their bills.

In April 1999, the FCC adopted principles and guidelines designed to make it easier for consumers to read and understand their telephone bills.²⁹ The "truth-in-billing" principles and guidelines set forth in the Order make telephone-bills more consumer-friendly by providing consumers with information they need to make informed choices in a competitive marketplace and to protect themselves against market abuses.

²⁷ Testimony of Lawrence E. Strickling, Deputy Chief of the FCC Common Carrier in the Hearing on Cramming and Slamming before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, United States House of Representatives, October 28, 1998,

²⁸CC Docket No. 98-170, September 17, 1998.

²⁹See FCC Report No. CC 99-12.

The guidelines are based on three basic principles that apply to both wireline and wireless:

(1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; (2) that bills contain full and nonmisleading descriptions of charges that appear therein; and (3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill.³⁰

In addition, to the items described above, the FCC's guidelines require the following:

- Carriers must clarify when consumers may withhold payment for service, as an example, to dispute a charge, without risking the loss of their basic service.
- Carriers are required to use standard labels to identify charges that are related to federal regulatory action.³¹

Federal Trade Commission

The statutory mandate of the FTC is to "promote the efficient functioning of the marketplace by taking action against unfair or deceptive actors or practices, and increasing consumer choice by promoting vigorous competition."³² The FTC pursues fraudulent activity, such as cramming, through law enforcement actions in federal district courts which seek temporary and permanent injunctive relief, and resolution to injured consumers.³³ This task is accomplished through a threefold approach.³⁴

- Systematic collection and analysis of consumer complaint data to spot trends.

³⁰Erratum to CC Docket no. 98-170, released May 28, 1999.

³¹See FCC report no. CC 99-12.

³²"Cramming" prepared statement of Eileen Harrington, Associate Director of the FTC's Division of Marketing Practices, Bureau of Consumer Protection, Before the Subcommittee on Investigations of the Governmental Affairs Committee, United States Senate, Washington, DC, July 23, 1998, 1.

³³Ibid.

³⁴Ibid., 4-5.

- Identification of appropriate targets for law enforcement action, and filing of federal district court actions across the country. The Commission, through these actions, seeks and obtains temporary restraining orders, preliminary injunctions, permanent injunctions, and other equitable relief to target unfair and deceptive practices and to preserve assets for consumer redress. As of December 1998, the FTC had filed action against four cramming offenders.
- Consumer education.

In Fall of 1998, the FTC approved a proposal to revise its 900-Number Rule, which includes a three-part approach to cramming:

- (1) The proposed Rule would require the express authorization of the person to be billed for the purchase of any "telephone-billed purchases" that cannot be blocked by 900-number blocking.
- (2) The proposed Rule would prohibit vendors from billing consumers for monthly or other recurring charges for pay-per-call services unless the vendor had entered into a "presubscription agreement" with the person to be billed for the service and had sent the consumer a written copy of that agreement. Thus, a single call to a pay-per-call service could no longer result in a consumer being unwittingly enrolled in a "psychic club" or other service plan which would result in recurring fees.
- (3) Consumers would have legal recourse to dispute unauthorized charges "crammed" on to their phone bills and have these charges removed. Some "crammed" charges result from the placement of a telephone call, which enables a vendor to "capture" a consumer's phone number as a basis for billing. Other crammed charges result from the unscrupulous provider having obtained a phone number through some other means, such as a sweepstakes entry. The proposed Rule would provide dispute resolution protections for all telephone-bill purchases, even if the charges for such purchases did not result from a telephone call. These dispute resolution procedure would not apply to toll charges.³⁵

In addition, the proposed rule would deter cramming by:

- Expanding coverage to the Rule to ensure its protections apply to the offer and sale of every audiotext service, even if the service was not accessed via a 900 number.

³⁵"Commission to Seek Public Comment on 900-Number Rule Revisions," FTC Press Release, October 23, 1999, 1-3.

- Keeping calls to toll-free numbers free. The proposed Rule would require audiotext providers, before permitting access to a service accessed by calling a toll-free number, to have a contractual agreement with the party responsible for paying for the service and to provide the consumer with a “personal identification number “ (PIN) to prevent unauthorized access to the service.
- Fighting cramming by imposing liability on vendors, billing entities and service bureaus, including billing aggregators, when they “know or should have known” that a telephone-billed purchase was not expressly unauthorized by the person responsible for paying the bill.
- Enhancing a consumer’s right to dispute unlawful charges by ensuring that any time a consumer disputes a charge for a telephone-billed purchase, the consumer will not be required to pay that charge until he or she is provided with both documentary evidence of the validity of the charge and a written explanation describing why the charge is valid.
- Preventing vendors, service bureaus, and carriers from using deceive tactics in attempting to sustain an illegitimate charge for a telephone-billed purchase. For example, this would prohibit a vendor from falsely representing to a billing entity that a consumer called a 900 number, when in fact, the consumer called a toll-free number.
- Requiring disclosure of cost and other material information in any facsimile-transmitted solicitation to call a pay-per-call service, or in any such solicitation transmitted to a consumer’s pager, beeper, or similar device.³⁶

State Action

Enforcement Actions of State Attorneys General

Table 3 contains a survey of enforcement actions taken by Offices of Attorneys General and state consumer affairs agencies.³⁷ According to the Table, thirteen states have initiated enforcement actions against crammers. Eleven states (California, Idaho,

³⁶Ibid.

³⁷This table is not necessarily exhaustive but rather represents those states that responded to a survey by the Office of the Illinois Attorney General. Enforcement actions not necessarily meant that defendants or respondents have made any admission of liability in such actions.

TABLE 3

STATE CRAMMING ENFORCEMENT ACTIONS³⁸

| State | Defendants or Respondents | Date of Last Action | Type of Case Alleged | Number of Consumer Complaints | Disposition | Consumer Restitution, Penalties & Costs |
|------------|---|---------------------|----------------------|-------------------------------|-----------------------------------|---|
| California | Future Telephone Communications (FTC) | | cramming | | | \$25,000 fine; 5 years probation; principal is the subject of extradition proceedings and a \$25,000 arrest warrant; \$150,000 - \$200,000 in restitution |
| Idaho | Veterans of America Association, Ltd. | April 1998 | cramming | 5 | assurance of voluntary compliance | injunctive relief; \$1,500 in penalties and costs; consumer restitution |
| Illinois | ASP Telecom, Inc. | March 1998 | cramming | 21 | complaint; action pending | |
| | Billing Services Corp, dba Source One | July 1997 | cramming | 18 | complaint; action pending | |
| | BLJ Communications and International Telemedia Associates, Inc. (ITA) | March 1998 | cramming | 33 | complaint; action pending | |
| | Coral Communications, Inc. and International Telemedia Associates, Inc. (ITA) | March 1998 | cramming | 61 | complaint; action pending | |
| | Enhanced Phone Services | March 1998 | cramming | 16 | complaint; action pending | |
| | New World Telecommunications, Inc. | March 1998 | cramming | 28 | complaint; action pending | |
| | Online Consulting Group, Inc. | July 1998 | cramming | 48 | complaint; action pending | |

³⁸Represents actions taken by Offices of Attorney General and State Consumer Affairs Agencies. This chart is not necessarily exhaustive, but rather represents those states that responded to a survey. Enforcement actions do not necessarily mean that defendants or respondents have made any admission of liability in such actions.

| State | Defendants or Respondents | Date of Last Action | Type of Case Alleged | Number of Consumer Complaints | Disposition | Consumer Restitution, Penalties & Costs |
|------------|---|---------------------|----------------------|-------------------------------|-----------------------------------|--|
| | RCP Communications Group and International Telemedia Associates (ITA) | March 1998 | cramming | 31 | complaint; action pending | |
| | System Technology | March 1998 | cramming | 14 | complaint; action pending | |
| | Telecommunications Resources, Inc. (TRI), <i>et al.</i> | September 1998 | cramming | 57 | final judgment and consent decree | injunctive relief; \$20,000 in penalties and costs; \$500,000 in restitution |
| | Traceform Eastern | March 1998 | cramming | 18 | complaint; action pending | |
| Missouri | 1 st Voicemail, Inc.; DDC Paging, Inc. <i>et al.</i> | March 1998 | cramming | | complaint; action pending | |
| | Campus Promotion Network, Inc.; and LCI International Telecom Corp. | September 1997 | cramming | | complaint; action pending | |
| | Coral Communications, Inc.; and Michael Tinari | March 1998 | cramming | | consent injunction and judgment | enjoined from operating in Missouri; costs; full restitution |
| | RRV Enterprises, Inc.; d/b/a Consumer Access | March 1998 | cramming | | consent injunction and judgment | injunctive relief; costs; full restitution |
| New Jersey | Coral Communications, Inc. and International Telemedia Associates, Inc. (ITA) | July 1998 | cramming | | complaint; action pending | |
| New York | Catalyst Communications, Inc. | October 1998 | cramming | 2 | assurance of discontinuance | \$10,000 in costs |
| | Pantel Communications, Inc. | August 1998 | cramming | 100 | consent judgment | injunctive relief; \$50,000 in costs; \$67,000 in restitution |

| State | Defendants or Respondents | Date of Last Action | Type of Case Alleged | Number of Consumer Complaints | Disposition | Consumer Restitution, Penalties & Costs |
|----------------|---|---------------------|----------------------|-------------------------------|---|--|
| | Veterals of America Association, Ltd., L.O.A.G. Marketing, Inc., and Action Marketing Group, Inc. | October 1998 | cramming | 70 | order and judgment | enjoined from doing business in New York until a \$100,000 performance bond is filed; \$67,000 in penalties; \$2,000 in costs; restitution |
| North Carolina | WKP Enterprises, Inc. | July 1998 | cramming | | default judgment and permanent injunction | injunctive relief; \$270,000 in penalties; restitution; \$3,000 in attorney's fees; court costs |
| Ohio | Communications Concepts & Investments, d/b/a Crown Communications, Inc., <i>et al.</i> | October 1998 | cramming | | complaint filed; pending | |
| | RRV Enterprises, Inc., d/b/a Consumer Access, <i>et al.</i> | October 1998 | cramming | | complaint filed; action pending | |
| | Telcom Operator Services, Inc., d/b/a USP&C Operator Service, <i>et al.</i> | October 1998 | cramming | | complaint filed; action pending | |
| Oregon | Accutel, Inc. | December 1998 | cramming slamming | | assurance of voluntary compliance | \$20,000 payment |
| | Coral Communications, Inc. | | cramming | | assurance of voluntary compliance | \$5,000 payment |
| | Quintel Entertainment, Inc. | December 1998 | cramming | | letter of agreement | \$750 payment |
| | Veterans of America Association, Ltd.; Lewis and Linn; and Bonneville Marketing | | cramming | | three (3) separate assurances of voluntary compliance | \$8,600 payments |

| State | Defendants or Respondents | Date of Last Action | Type of Case Alleged | Number of Consumer Complaints | Disposition | Consumer Restitution, Penalties & Costs |
|--------------|--|---------------------|----------------------|-------------------------------|-----------------------------------|---|
| Pennsylvania | Veterans of America Association, Ltd. | July 1998 | cramming | | assurance of voluntary compliance | \$4,000 in penalties; \$3,500 in costs; refunds to consumers |
| Tennessee | Global Tel*Link Corp. | 1997 | cramming | 11878 | complaint & agreed final judgment | injunctive relief; \$5,000 in costs and fees; \$75,000 in payments to State; \$100,000 to Public Service Commission to audit and monitor consumer restitution; full refunds |
| Virginia | Telecommunications Resources, Inc. (TRI) | September 1998 | cramming | | final judgment & consent decree | injunctive relief; \$435,000 in restitution; \$15,000 in penalties and costs |
| Wisconsin | Quest Communications Corp. | September 1996 | cramming | | final judgment | injunctive relief; \$25,000 in penalties and costs; \$40,000 in restitution |
| | Telecom Operator Services, dba USP&C Operator Services | March 1998 | cramming | | complaint action pending | |

Source: Table was composed by Richard R. Ginter, paralegal, Office of the Illinois Attorney General, Consumer Fraud Bureau.

Illinois, Missouri, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Virginia, and Wisconsin) have assessed penalties and costs to crammers. In addition, in 1998, the Florida PSC investigated and closed 1,853 cases; with a total savings of \$81,439.61 to consumers.

The actions against specific providers in multiple jurisdictions suggests the need for a national database of state actions and investigations against alleged cramming offenders. The database could include enforcement actions and investigations conducted by state public utility commissions, state attorneys general offices, the FCC and the FTC. If a Commission were aware that a company doing business in their state was the subject of cramming investigations in other states, the Commission could more closely monitor complaints against that company.

The database could be patterned after Consumer Sentinel, the FTC's database that offers law enforcement agencies in the US and Canada access to telemarketing, direct mail, and Internet complaints. Members of Consumer Sentinel can search more than 130,000 consumer complaints in the databank using any combination of more than ten fields of information or add complaints to the database through the Consumer Sentinel Website. All state public utility commissions can contribute complaints to Consumer Sentinel and commission with enforcement authority can access the databank.³⁹

Other State Mitigation Actions

As indicated by Table 4, both state legislators and public utility commissions have been taking aggressive action to deter cramming and to clarify the rights and remedies available to consumers regarding telephone billing disputes. These actions can be divided into the following categories:

- Penalties and Enforcement
- Authorization and Verification
- Consumer Liability
- Certification of Billing Aggregators
- Billing Issues

³⁹For further information see Consumer Sentinel at: <http://www.ftc.gov/sentinel/index.html>.

TABLE 4
STATE ACTION

| | | |
|----|--|--|
| CA | Passed SB 378 and AB2142 ⁴⁰ | <p>Requires that until the year 2001, only "communications-related" goods and services can be charges to a telephone bill. The CPUC does allow "CPUC specified 'nontelecommunications-related' goods and services on a separate bill within the telephone envelope."</p> <p>Requires that both bills must contain only subscriber-authorized charges; subscriber is not responsible for unauthorized charges.</p> <p>Requires that subscriber authorization for purchase of products or services cannot be used as an entry form for a sweepstakes or contest.</p> <p>Expands the commission's jurisdiction to enforce public utilities codes against nonpublic utilities violating the code as if the violators were public utilities.⁴¹</p> <p>Establishes the following rules for the billing companies: (1) must provide a clear and concise description of the product or service on the bill; (2) include the amount charged for each product or service including taxes and surcharges; (3) explain how to resolve any dispute about the charges including the name, address, and telephone number of the party responsible for generating the charge and a description of the dispute procedure; (4) provide the telephone number at the CPUC where a consumer may register a complaint; (5) establish, maintain, and staff a toll-free telephone under to respond to questions or disputes about charges billed; (6) provide a means for expeditiously resolving subscriber disputes of unauthorized charges; (7) resolve all billing disputes within thirty days of receipt of the dispute.</p> <p>Requires the billing company must provide a separate billing section for each person, corporation or billing agent that generates charges on the bill.</p> <p>Permits the CPUC to order a billing telephone company to terminate billing and collection services to violators who fail to respond to CPUC staff requests for information</p> <p>Requires billing companies to provide the CPUC with reports of complaints made by subscribers regarding billing. CPUC must initiate an investigation of any entity that receives more than 100 complaints in any 90 day period.</p> <p>Permits the CPUC to adopt additional rules and regulations and issue decision and orders as necessary to enforce the provisions of the provisions of these bills.</p> |
|----|--|--|

⁴⁰These two bills were meant to be read together.

⁴¹ Specifically, AB 2142 expands the CPUC's jurisdiction and permits the CPUC to enforce P.U. Code 2102 to 211 ND 2114 against nonpublic utilities violating the provision of sections 288.9 and 2890 as if the violators were public utilities.

| | | |
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| FL | Held a workshop on 12/9/98 regarding proposed amendments to Rule 25-4.110 | Developing rule amendments to address cramming. |
| GA | Enacted SB 522 | <p>Requires written authorization before telecommunications company can charge for any service provided by a third-party.</p> <p>Requires that new charges must be states in a clear, conspicuous, separate way so that the customer is aware of them.</p> |
| IL | SB 1567 | <p>Establishes rules for verification of a subscriber's change in telecommunication carrier or addition to a subscriber's services.</p> <p>Prohibits the use of sweepstakes boxes to solicit authority to provide telecommunication or related services or enhanced services.</p> <p>Requires written notification of new services to consumers or independent third-party verification.</p> <p>Grants the Commission the authority to issue a cease and desist order.</p> <p>Provides the Commission the authority to revoke a telecommunication carrier's certificate of service authority for a pattern of violation or intentionally violating a cease and desist order.</p> |
| MT | House Bill No. 598 | <p>States that a telecommunications carrier who purposely or knowingly initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer is guilty of a misdemeanor and shall be punished.</p> <p>States that If after due course, the Commission finds an entity has initiated charges to a customer's LEC bill for service for products not provided or authorized, the Commission may impose a civil fine of up to \$1,000 for each violation.</p> <p>States that If after due course, the Commission has found an entity has frequently indicated unauthorized charges to a consumer's LEC bill for services nor authorized or provided, the Commission may notify the secretary of state and the secretary of state shall suspend or revoke any license, registration, or other filing entitling that entity to transact business in that state.</p> |

| | | |
|----|--|--|
| ND | <p>Legislation to enact a new section to chapter 49-07 and a new section to chapter 49-21 of the North Dakota Century Code, to reenact section 49-02-01.1.</p> | <p>Allows for fines for violation of Commission rules and orders (\$10,000 to \$20,000 for the first offense, \$25,000 to \$40,000 for any subsequent offense.⁴²</p> <p>Requires customer authorization of initiation or change of service must be obtained in writing or oral agreement.⁴³</p> <p>Requires independent third-party verification is needed for oral agreement..</p> <p>Requires the telecommunication company to provide specific, clear, written notification to the customer of each initiation or change in service within 10 days of authorization. Notification must include all terms and conditions, rates and charges.</p> <p>Requires bills to contain the name, address, and toll-free telephone number of each carrier identified on the bill, with information on how to cancel the new service or reverse the change in cerca of the customer's believes the initiation or change was not authorized. First bill following initiation of a change in service or provider must contain conspicuous notice of the new or changed service or change in service provider.</p> <p>States that within 60 days of notifying the telecommunications or billing company of unauthorized changes in service, the customer is entitled to a full credit for all charges.</p> <p>Allows the Commission to issue cease and desist order.</p> |
| OH | | <p>The PUC, the Attorney General's Office, and the Consumer Counsel held a cramming roundtable with representatives of the LECs, billing aggregators, and other stakeholders.</p> |
| PA | <p>Proposed Rulemaking Order and Final Interim Guidelines</p> | <p>Requires the LECs to respond to the cramming complaint by: (1) recording the charge; (2) instructing the billing clearinghouse, IXC, or the information service provider to prevent further billing of that charge or type of charge to this customer's account; (3) informing the customer that the billing entity may attempt to use other methods to collect the charges, including a collection's agency, and 4) informing the customer of the right to pursue a complaint against the prover of the service or charges.</p> <p>Places the responsibility for resolving the complaint on the party (IXC, information service provider or billing clearinghouse) responsible for the charge, as well as on the LEC.</p> |

⁴²Each change or initiation of a telecommunications service shall constitute a separate offense.

⁴³ Oral agreement is valid only if: the customer initiates the call and an independent third-party verifies the authorization.

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| <p>TN</p> | <p>Rule 1220-4-2-.56</p> | <p>Allows only "authorized" individuals to make service and billing decisions.</p> <p>Provides the Commission the ability to assess a maximum fine of \$100 per day, per offense against guilty companies</p> <p>Provides penalties for violators.</p> <p>Requires that telephone charges are listed in sufficient detail to allow for greater understanding.</p> <p>Requires the LECS to provide a statement on the consumer's telephone bill indicating that nonpayment of disputed third-party charges will not result in disconnection of local service.</p> <p>Requires LECs to offer consumers a service that blocks the placing of monthly recurring charges on consumer bills by third-party service providers (excludes authorization of casual billing of toll calls such as collect, third party, calls to a carriers's toll access number, and authorized charges for directory advertising.</p> <p>Requires prior consent of an "authorized" individual for the placement of charges on a telephone bill. Prohibits combining consumer authorization with inducements of any kind involving the element of chance; also prohibits use of misleading, deceptive, or unfair marketing acts or practices to obtain a consumers' consent.</p> <p>Requires the Division of Consumer Services, on receipt of a cramming complaint, to immediately contacts the company in question on behalf of the consumer. If the company cannot verify that the service was indeed requested by the consumer, the charge is usually removed.</p> <p>Requires the billing company to list a toll-free number on the telephone bill so that consumers can inquire about charges.</p> <p>Disallows telecommunications service providers and/or billing agent to bill for services provided by service providers that lack any required certification to do business in Tennessee.</p> |
|-----------|------------------------------|---|

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|----|---|---|
| TX | TX6RSB 86 | <p>Requires providing customers with information for contacting the company offering the service and any billing agent;</p> <p>Requires written authorization from the customer. Requires the telecommunications utility to remove all unauthorized charges; refund or credit, at the customer's choice, all money or credit paid for unauthorized charges;</p> <p>Requires notification to customers of their rights: including what to do if crammed.</p> <p>Allows the Commission to assess to a billing telecommunication utility administrative penalties and/or certification revocation; if the Commission finds that a billing telecommunications utility is repeatedly and recklessly in violation of cramming rules, the Commission may suspend, restrict, or revoke the registration or certificate of the telecommunications utility denying the right to provide service in the state.</p> |
| UT | Drafted Amendments to R746-240 Telecommunications Service Rules | <p>Requires bills to contain a clear, concise description of services being billed; full disclosure of all terms and conditions; unauthorized charges must be immediately credited to the customers account by the utility.</p> <p>Requires billing for only authorized service.</p> |
| VT | H.77 (passed by House). | <p>Requires all billing aggregators to be registered with the Public Service Board (PSB). The PSB may revoke a billing aggregators registration for: knowingly or repeatedly forwarding unauthorized charges; engaging in false or deceptive practices.</p> <p>Requires the LEC to immediately suspend collection efforts if a consumer claims that a charge for an unauthorized services was included in the LEC bill; the LEC must either cease collection efforts entirely or request evidence from the billing aggregator that the consumer authorized the charge. If sufficient evidence is not presents to prove authorization, the LEC shall remove or recourse the unauthorized charge.</p> <p>Allows the PSB to impose administrative penalties, up to \$1,000, for the following violations: a billing aggregator who forwards charges to a billing agent for unauthorized products or services; a billing aggregator who is not properly registered and is billing consumers; a telecommunications carrier who does not obtain evidence of authorization and does not remove the charges or provide a refund for charges that are subject of a complaint.</p> <p>Requires the seller to send the consumer a notice of the contract or agreement within 10 days after a consumer has agreed to purchase services or goods. Requires clear and conscious disclosure of the nature of the goods and services, costs, information on how to cancel the contract and consumer assistance. Notification must not be combined with any sweepstakes offer or other inducement to purchase goods or services.</p> |

| | | |
|----|-------------------|--|
| WY | Section 37-15-412 | <p>Prohibits charging for products or services not provided to the consumer or authorized by the consumer.</p> <p>Absolves the Consumer of liability for charges for any unauthorized product provided or service initiated without the consent of the consumer.</p> <p>Allows the Commission to impose for each charge in violation of these rules a penalty of up to \$1,000.00; the Commission may permanently revoke the authority of the company or provide services in this state.</p> |
|----|-------------------|--|

Penalties and Enforcement

California, Illinois, Montana, North Dakota, Tennessee, Texas, Wyoming, and North Dakota have been very active in the area of penalties and enforcement. In 1998, the California Public Utilities Commission (CPUC) prosecuted two carriers; one carrier had approximately 3000,000 victims, and the other carrier had approximately 40,000 victims. Ten other cramming cases were turned over to California district attorneys. Legislation now expands the commission's jurisdiction to enforce public utility codes against nonpublic utilities as if the violators were public utilities.

California legislation also permits the CPUC to order a billing telephone company to terminate billing and collection services to violators who fail to respond to CPUC staff requests for information. Similarly, Illinois statutes provide the Commission with the authority to issue a cease and desist order to violators or to revoke a telecommunication's carriers certificate of service. Texas rules address cramming violations through the use of administrative penalties, and the ability of the Commission to suspend, restrict, or revoke the registration or certification of the violating telecommunications utility.

The Wyoming Public Utilities Commission may impose a penalty of up to \$1,000 for each charge in violation of the Commission's cramming rules and may permanently revoke the authority of the company to provide services in the state. Similarly, Montana can impose a civil fine of up to \$1,000 for initiation of charges to a customer's bill for service or products not provided or authorized.

North Dakota levies stiff fines of \$10,000 to \$20,000 for the first offense and \$25,000 to \$40,000 for any subsequent violation of Commission cramming rules and orders.

In Vermont, legislation that has passed the House requires all billing aggregators to be registered and provides for provisions through which the Commission can revoke a billing aggregator's registration and/or impose administrative penalties to violators. Recently the Oklahoma Corporation Commission (OCC) set a precedent for dealing with telecommunications market abusers by levying a fine that could reach \$200,000.

If other mitigation strategies do not deter cramming, commissions may want to consider stiff penalties such as the ones levied by the OCC..

Authorization and Verification

A survey by The Public Utility Commission of Texas of 658 randomly selected customers who had written to the Office of Customer Protection between September 30, 1997 and June 30, 1998, revealed that 86 percent of the respondents wanted written verification by the responsible party, prior to authorization of services such as Caller ID or voice mail.⁴⁴

Tennessee is the only state that requires the LECs to offer consumers a service that blocks the placing of monthly recurring charges on their bill by third-party service providers.⁴⁵

California, Georgia, Illinois, Montana, Tennessee, Texas, Utah (proposed), and Wyoming all have rules related to authorization or verification of charges. California rules mandate that bills must contain only subscriber-authorized charges. Rules also state that subscriber authorization for purchase of products or services cannot be used as an entry form for a sweepstake or contest. Georgia requires written verification

⁴⁴The survey received a 68 percent response rate.

⁴⁵This excludes authorization of casual billing of toll calls such as collect, third party, calls to a carriers' toll access number, and authorized charges for directory advertising.

before a telecommunications company can charge for any service provided by a third-party. Illinois statutes prohibit the use of sweepstakes boxes to authorize telecommunications-related or enhanced services. For the addition of new services, the statutes require independent third-party verification or written notification to consumers.

Montana rules allow the Commission to notify the Secretary of State and for the Secretary of State to revoke or suspend any license, registration, or other filing entitling an entity to transact business in that state. Tennessee requires prior consent of an "authorized" individual for the placement of charges on a LEC bill and prohibits combining consumer authorization with inducements of any kind which involve the element of chance or are misleading, deceptive or unfair marketing practices. Texas requires written authorization from the consumer; both Utah and Wyoming prohibit billing of unauthorized services.

Consumer Liability

Rules in seven states address the issue of customer liability associated with unauthorized charges. Rules in California and Wyoming state that the subscriber is not responsible for unauthorized charges. Rules in North Dakota, Pennsylvania, Tennessee, Utah, and Vermont specifically require the refunding or removing of unauthorized charges.

Tennessee requires that on the receipt of a cramming complaint, the Division of Consumer Services will immediately contact the company in question on behalf of the consumer. If the company cannot verify that the service was indeed authorized by the consumer, the charge is usually removed. Tennessee also requires the LECs to provide a statement on the LEC bill indicating that nonpayment of disputed third-party charges will not result in disconnection of local service.

Pending legislation in Vermont requires the LEC to immediately suspend collection efforts if consumer claim that they were charged for an unauthorized service.

If the billing entity cannot provide evidence of authorization, the LEC is required to remove or refund the unauthorized charge.

Billing Issues

With regard to billing issues, California has perhaps taken the most aggressive action of all the states by restricting the LEC bill to only "communications-related" goods and services until the year 2001. However, the CPUC does allow specified "non-telecommunication-related" goods and services to be included on a separate bill within the telephone bill envelope.

Actions taken in California, Georgia, North Dakota, Pennsylvania, Tennessee, Texas, Utah, and Vermont have addressed either the necessity for LEC bills to contain a clear, concise description of services being billed and/or the importance of providing the consumer with clear, specific information on how to dispute a charge.

North Dakota requires the LEC to provide specific, clear written notification of each initiation or change in service within ten days of authorization. Notification must include all terms and conditions, rates and charges. Moreover, the bill must contain the name, address, and toll-free telephone number of each carrier identified on the bill, with information on how to cancel the new service or reverse the charge if the customer believes the initiation or charge was not authorized. The first bill following initiation of a change in service or provider must contain conspicuous notice of the new or changed service or change in service provider.

Pending legislation in Vermont requires the seller to send the consumer a notice of the agreement within ten days after the purchase. The notification must include clear and conspicuous disclosure of the nature of the goods and services, costs, and information on how to cancel the contact and how to obtain consumer assistance. The notification must not be combined with any sweepstakes offer or other inducement to purchase goods or services.

In SB 378, the California PUC set the rules for both the bill containing the regulated telecommunications products and services and the additional bill containing

the charges for the unregulated nontelecommunications products and services.

Accordingly the bill must meet the following criteria:

- Provide a clear and concise description of the product or service on the telephone bill;
- Specify the amount charges for each product or service including taxes and surcharges.
 - Explain how to resolve any dispute about the charges including the name, address, and telephone number of the party generating the charge and a description of the dispute procedures.
 - Provide the telephone number at the CPUC where a consumer may register a complaint.
 - Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about the charges billed.
 - Contain a separate section for each person, corporation, or billing agent that generates a charge on the subscriber's telephone bill.

Consumer Education

Consumer education is a prevention strategy being used by most stakeholders: state and federal commissions, consumer advocacy groups, and telecommunications providers and their related associations. Generally speaking, consumer education materials seek to provide information regarding the following aspects of the problem:

- What is cramming?
- What are examples of cramming charges?
- How does cramming happen?
- How can I avoid being crammed?
- How do I know if I've been a victim?
- What can I do if I've been crammed?
- Where can I find assistance?
- What is the complaint-handling process?
- Can my local telephone service be disconnected for failure to pay disputed charges?

The FCC's cramming fact sheet offers consumers some excellent tips for consideration when reviewing their monthly telephone bills. It advises consumers to:

- Review your monthly telephone bills as closely as you review your monthly credit card and bank statements.
- Ask yourself the following questions as you review your telephone bills?
 - Do I recognize the names of all of the companies listed on my bill?
 - What services were provided by the listed companies?
 - Does the bill include charges for calls I did not place and services I did not authorize?
 - Are the rates charged by each company consistent with the rates that the company quoted to me?⁴⁶

Similarly, the cramming brochure developed by the Public Utilities Commission of Ohio offers consumers some excellent tips for avoiding being crammed. They include:

- Examine your monthly telephone bill and make sure understand every charge. Look for unfamiliar company names, calls you didn't make, and services you didn't authorize. If something isn't clear or there's a company name you haven't seen before, call your local telephone company and ask for an explanation.
- Keep a note pad by the telephone and jot down each phone service (e.g., call waiting, voice mail, etc.,) that you authorize, as well as any long distance calls and calls to informational or "900" services.
- Be careful of entering "activation codes" or answering "yes" to questions that may be intended to get you to unintentionally authorize services you don't want.
- Read the fine print before completing contest applications, sweepstakes tickets, and coupon offers.
- Be sure that you know who's using your telephone at all times and request "blocking" services when appropriate. Having "900" numbers blocked from your telephone line will help keep mysterious charges off your bill.⁴⁷

⁴⁶FCC Fact sheet, "Cramming: Unauthorized, Misleading or Deceptive Charges Placed on Consumers' Telephone Bills," as downloaded from http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/cramming.html.

⁴⁷ The Public Utilities Commission of Ohio Cramming Fact sheet as downloaded from: <http://www.puc.state.oh.us/consumer/PIC/Cramming.html>.

The New York Public Service Commission offers the following advice for consumers who think that they have been crammed:

- Review your monthly telephone bill carefully as you would any other bill (i.e., a credit card bill).
- Call the company shown on your telephone bill that provided any charges that are questionable or in dispute.
- Ask the company providing the charges, or the billing warehouse, to explain the charges.
- Request that a billing adjustment be issued for any incorrect charges. Your local and long distance services will not be terminated due to nonpayment of these charges. However, you need to approach the same provider or billing warehouse to resolve the charges to avoid independent collection attempts.
- Call your local telephone company and request the removal of incorrect charges from your bill if the company responsible for the charges or the billing warehouse will not remove them.
- File a complaint with the proper regulatory agency listed below⁴⁸.

Recommendations for consumer education are discussed in Chapter 5.

⁴⁸ New York Public Service Commission, "PSC Consumer Guide: Cramming," as downloaded from:<http://www.dps.state.ny.us/cramming.htm#5>.

CHAPTER THREE

INDUSTRY ACTION

Industry Association Action

In recognition of the critical role that billinghouses must play in curbing cramming and protecting consumers, three billing clearinghouses banded together to form the Coalition to Ensure Responsible billing (CERB).⁴⁹ In July of 1998, CERB drafted mandatory Anti-Cramming Consumer Protection Standards. The Standards outline stringent, proconsumer policies for ensuring that only legitimate charges appear on consumers' bills. Highlights of the standards include the following:

- **Prescreening of Providers and Services**
 - CERB Standards require billing clearinghouses to prescreen all offers, prospective service providers and the related-programs, products, and services.
 - Service providers must disclose comprehensive background information. Service providers must supply their consumer marketing materials, such as advertisements, sales and validation scripts and an honest clear "text phrase" to be used on consumer bills. The standards prohibit questionable marketing practices including sweepstakes and negative options sales offers (where customer receives a service until canceled). Each CERB member must maintain an internal standards committee to review the information collected about service providers and programs to ensure that they comply with CERB standard.

- **Compliance Monitoring**
 - CERB standards require the billing clearinghouse to maintain active monitoring of providers and programs. Billing clearinghouses must monitor consumer inquiries, complaints to government agencies, and complaints to the local telephone company. They must notify service providers of complaints or inquire and coordinate investigations with those service providers. They must take action to correct problems.

⁴⁹Note the founding members are Billing Concepts, OAN Services and Federal TransTel.

- **Mandatory Authorization Methods**
Service providers must authorize orders for services by one of three methods: (1) independent third-party verification, (2) a written letter of authorization or sales order, or (3) a voice recording of the sales conversation. Authorization must include assurance that the customer is qualified to authorize billing, a description of the product or service and the charges, consumer acknowledgment that the charges will appear on the phone bill, and acceptance of the offer by the consumer.

- **Consumer-Friendly Billing Practices**
Bills must include a clear description of the billed services, the service provider, and a clear identification of the charges and a toll-free number that subscribers may call regarding their bill.⁵⁰

- **Consumer Satisfaction**
Billing clearinghouses must provide a quick and thorough response to consumer inquiries and provide consumers with information about how to contact the service provider, the nature of any charge, the method of authorization and information as to how a consumer may cancel a service or product. Billing clearinghouses must provide a toll-free customer service number and dedicated staff to respond to consumer inquiries. Clearinghouses must investigate any dispute in a full and timely manner. Clearinghouses will issue a credit or respond to the consumer within thirty days of the dispute and consumers will not be rebilled on their local telephone bill for charges previously credited.

- **Disclosure**
Clearinghouses are required to share with each other and with federal and state enforcement agencies information about service providers whose contracts they have terminated for cramming problems. All complaint-related data must be retained by the clearinghouse.

⁵⁰In "Comments of the National Association of the Attorneys General Telecommunications Subcommittee of the Consumer Protection Committee in the Matter of Pay-Per-Call Review" before the FTC, the Attorneys General agree with CERB that consumers should have only one number to call in order to obtain information. However, the Attorneys General recognize that in all probability the number consumers will be given is "that of the billing entity, not a wholly disinterested party," 15.

In July 1998, the United States Telephone Association, the association of local telephone companies, worked with the FCC to develop new voluntary best practice guidelines to combat cramming. A summary of the "best practices" is provided below.⁵¹

- Bills should be comprehensible, complete, and include information the consumer may need to discuss and, if necessary, dispute charges.
- Consumers should be provided with options to control whether or not a third-party's products and services are charged on their telephone bills.
- Consumer authorization of services ordered should be appropriately verified.
- Local exchange carriers should screen products, services, and service providers prior to approval for inclusion on the telephone bill.
- Clearinghouses should ensure that only charges that have been authorized by the end-user customer will be billed.
- Local exchange carriers should continue to educate consumers as to their rights and the process for resolution of disputes.
- Each local exchange carrier should provide appropriate law enforcement, regulatory agencies, and other local exchange carriers with various categories of data to assist in controlling cramming.

In order to minimize the instances of cramming, the members of the New York State Telecommunications Association, Inc. (NYSTA), which represents most New York LECs, established the following "Cramming Core Guidelines":

- Cramming is the submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on customers' local telephone bills.
- To provide local telephone bills to residential customers that include charges in a clear and understandable form and language.
- To fully adjust charges on local telephone bills which meet the definition of cramming in these guidelines.
- To address cramming issues through third-party billing and collection agreements.
- To provide outreach and customer education as it applies to cramming.⁵²

⁵¹For further information see: "Anti-Cramming Best Practices Guidelines" available at http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.htm.

⁵² NYSTA "Cramming Core Guidelines" as downloaded from: <http://www.dps.state.ny.us/cramguide.htm>.

Local Exchange Carrier (LEC) Action

As described below a number of LECs have taken aggressive and innovative actions to mitigate cramming.⁵³

- Pacific Bell⁵⁴
 - Established a new call center: "Third-Party Billing Center" for California customers
 - 100 trained consumer representatives dedicated as advocates and representatives of consumers to assist customers with third-party billing issues
 - Discontinued billing to over forty service providers that generated excessive cramming complaints

- GTE
 - Enabled the customer to limit the companies that can bill products to their telephone bill (effective April 1, 1999).
 - Eliminated nontelecommunications items, such as "club fee" or "membership fees" for psychic or sports chat lines (effective January 1, 1999).
 - Required independent third-party verification for any new service other than long distance service (effective January 1, 1999).
 - Handles complaints by a three-way call involving a GTE representative, GTE's billing customer, and the end-user. If the call does not resolve the complaint to the end-user's satisfaction, GTE will immediately remove the charges from the end-users bill.
 - Required billing entities using GTE's billing services to keep end-user complaints below established complaint thresholds. The threshold bands ranges from 0.0009 percent of the first 1000,000 bills rendered to 0.00 percent of bills rendered over 12,000,000 bills. If a billing entity exceeds the established complaint threshold, it may be charged \$2,000 for every complaint over the threshold. If complaints continue to exceed the threshold levels, particular billing services may be suspended or terminated or the entire billing services contract may be suspended or terminated.⁵⁵

⁵³These examples are provided as illustrative examples; they are not representative of all the anti-cramming actions taken by local exchange carriers. Nor do they imply that the carrier in the example is the only carrier who has taken that initiative.

⁵⁴"Pacific Bell Opens Redding Call Center to Help Customers High Fraud and Assist in Billing Complaints," Excite, April 21, 1999.

⁵⁵Comments of GTE Service Corporation, Before the Federal Trade Commission, In the Matter of Pay-Per-Call Rule Review, FTC File No. R611016, March 10, 1999, 8.

- Bell Atlantic⁵⁶
 - Eliminated twenty-seven telecommunications service providers from its bills and suspended 59 service providers.
 - Stated that as of early 1999, Bell Atlantic customers can request that only Bell Atlantic and their regional toll and long distance companies can put miscellaneous charge on their bills. This would eliminate the ability of billing clearinghouses to place charges on the customers' bill.
 - Initiated first-step resolution. When Bell Atlantic receives a cramming complaint from a customer, the company immediately removes the charge from the bill.
 - Placed a moratorium on providing new billing services. In May 1998, Bell Atlantic declared a moratorium on the granting of any new services not previously approved until the company can be assured that cramming is under control.
 - Continued screening of proposals for new services. Bell Atlantic has historically screened proposals for billing new services and as reserved the right not to bill for objectionable services.

- U S West⁵⁷
 - Reviews every product or service in advance to make sure it is appropriate for billing.
 - Allows billing for only telephone-related services.
 - Prohibits billing for services that U S West believes that customers will find objectionable.
 - Places all charges from each service provider on a separate page with the name, logo, and telephone number of the company that provided the service at the top of the page.⁵⁸

⁵⁶"Bell Atlantic Intensifies Attack on 'Cramming;' Bell Atlantic Press Release, December 9, 1998.

⁵⁷U S WEST Uses '3 Strikes & You're Out' Policy to Crack Down on 'Crammers'" U S West Press, July 22, 1998.

⁵⁸U S WEST Communications Cracks Don on Firms that Engage in Phone-Bill 'Cramming': Urges Customers to Help by Checking Their Bills," U S WEST Press Release, April 30, 1998.

- Ameritech⁵⁹
 - Unveiled in April 1999, in response to customer feedback, a new, simplified phone bill for 2.5 million customers in Columbus, Ohio. Characteristics of the bill are described below:
 - Simpler format:
Different print types, bold headings, and the use of color.
 - Larger size:
Standard size paper (8 ½" x 11") and a two-column format.
 - Bill-At-A-Glance:
This new section summarizes charges.
 - Billing Summary:
Customers can quickly see all the companies whose services appear on the bill, plus their specific charges and their toll-free numbers.

- BellSouth⁶⁰
 - Rejects up to 25 percent of service provider programs because they either fail to meet BellSouth's standards or do not appear easily understood by consumers.
 - Disallows billing for marketing programs that use contests, sweepstakes, or other "check box" methods to sign up.
 - Disallows billing for pay-per call 900 service plans.
 - Requires re-evaluation of contracts with service providers who provide poor quality or problematic billing.
 - Requires better service descriptions on bill pages.

Clearly, the LECs have taken some very innovative steps toward mitigating the problem of cramming. It is recommended that state public utility commissions begin to conduct consumer research to assess consumer preferences for mitigating cramming. Salient issues will revolve consumer preferences for protective regulation. Perhaps the most important consumer research question revolves around the degree to which consumers feel that it is the responsibility of policymakers to protect them against market abuses vs. the responsibility of consumers to safeguard themselves by vigilantly checking their

⁵⁹"Ameritech Introduces Simplified, Easy-To-Read Bill," Ameritech Press Release, April 15, 1999.

⁶⁰BellSouth Outlines Policy to Protect Customers From Cramming," BellSouth Press Release, May 19, 1998.

LEC bill for fraudulent charges. Intrinsic to this question is the issue of whether consumers prefer that nontelecommunications services be allowed to be billed to the LEC bill. Other recommendations for consumer research issues are discussed in Chapter 5.

CHAPTER 4

POLICY IMPLICATIONS

As commissions and other policymakers wrestle with the question of how to best address the issue of fraudulent telephone charges, it becomes clear that intrinsic to this question is the issue of who is primarily responsible for consumer protection: the policymaker or the consumer?

Clearly, a consumer who is entering into any financial transaction has some responsibilities to check to ensure that they are treated in a fair and ethical manner. However, the new competitive market has raised new issues associated with the consumers' responsibility to safeguard themselves against market abuses versus the regulators' responsibility to protect the consumer from market abuses. While it may be reasonable to expect consumers to check their telephone bills for unauthorized services, just as one would expect credit card customers to check their bills for charges for merchandise that was not purchased, it may not be reasonable to expect consumers to recognize changes such as "monthly service fee" or "basic service fee" as fraudulent charges.

As we move forward in the new competitive environment, and as markets become receptive to new entrants and services, it will become important for policymakers to assess the degree to which consumers want protective regulation to shield them from the potential abuses of unscrupulous market players. It is recommended that policymakers begin to do focus group research with a representative sample of target markets of consumers to determine if consumers want the responsibility of carefully checking their telephone bills for fraudulent charges or if they prefer stringent protective and enforcement regulations to penalize and/or deter market abuse. It will also be important for policymakers to gather input from consumer protection organizations, which protect at-risk consumer groups, such as the elderly,

the disabled, immigrants, etc, to determine whether they feel that all consumers are capable of adequately protecting themselves from market abusers.

This issue has interesting implications regarding the roles and responsibilities of the public utilities commission in the new regulatory environment. In the past, public utility commissions have not sought public input regarding the degree of regulation that the public preferred. However, in the report, *Transforming Public Utility Commissions in the New Regulatory Environment: Some Issues and Ideas for Managing Change*, David W. Wirick et al. discuss the impact of change on public utility commissions, the necessity for commissions themselves to change, the challenges facing public utility commissions, and the salient need for public support:

The change required today is in response to a fairly radical reshaping of the environment and, as a result, requires, fundamental changes in the missions and operations of public utility commissions. To some extent, what is required of commissions today is the creation of what is not rather than the alternative of what is.⁶¹

In actuality, the challenge for public utility commissions is twofold. They must adapt to radically shifting environments by creating flexible and effective organizations. And they must also simultaneously convince elected officials that they are relevant and necessary to the protection of the public. Commission managers must make the right changes and then sell those changes to legislators and the public as an effective response to changing times.⁶²

Similarly, in considering the future for state public service commissions, participants at the Second NARUC/NRRI Commissioners Summit stress the need for commissions to gain a better understanding of consumers and to enhance their ability to respond to consumer needs:

In order for commissions to remain relevant in the new regulatory environment, they should "develop a more thorough understanding of

⁶¹David W. Wirick, et al., *Transforming Public Utility Commissions in the New Regulatory Environment: Some Issues and Ideas for Managing Change* (Columbus, OH: The National Regulatory Research Institute (NRRI), 1996), 2.

⁶²Ibid.2.

consumers” and “develop a better ability to handle consumer complaints.”⁶³

Clearly, it will be difficult for commissions to sell themselves to both the public and elected officials as the organization best able to protect consumers of public utility services if there is a withdrawal of public support for public utility commissions due to the fact that public perceives that the new regulatory environment has rendered them the “defenseless prey” of market abusers or perceives that public utility commissions have not done an adequate job of protecting consumers from market abusers.

As Commissioner William Gillis points out in the *Discussion Draft of State Commissions in Transition: The NARUC Consumer Issues Challenge*, the rise in consumer complaints is one indicator of how greater reliance on the private market as the principle economic regulator is impacting consumers:

A survey conducted by the NARUC staff subcommittee on Consumer Affairs, including responses from twenty-eight states, found that between 1993 and 1997, complaints about telephone service have increased 91 percent, electric complaints by 58 percent and gas complaints by 40 percent. The California Public Utility Commission reports that consumer contacts increased 65 percent between 1995/1996 and 1997/1998. The rising number of consumer complaints highlights the need for policies providing “protection” for consumers in day to day transactions with utilities.⁶⁴

With regard to cramming, if the public does not want the responsibility of protecting themselves from market abusers by diligently checking their phone bill, and in fact feels that it is responsibility of the commission to protect them against market abuses such as cramming, there is a danger that the public will develop the perception that the new regulatory environment is not providing adequate consumer safeguards or that the policymakers— specifically, the public utility commissions—are not doing an adequate job of consumer protection. This in turn, could cause a withdraw of public

⁶³Staff of the National Regulatory Research Institute, *The Proceedings of the Second NARUC/NRRI Summit* (Columbus, OH: The National Regulatory Research Institute, 1998).

⁶⁴*Ibid.*, 2.

support for the public utility commission as the agency best able to protect consumers of public utility services. This is not an inconsequential issue—the question: Is the public utility commission the best agency to serve the specific public interest?— that has already been raised in several states. In at least two states, when commissions decided to enhance their public education role, they were challenged by the Office of the Consumer Advocate, which believed that its mission included consumer education and that it was better positioned to interact with consumers.⁶⁵

Unfortunately, as Commissioner Gillis points out, the prevalent data does indicate high levels of consumer dissatisfaction with utility practices and policies. As commissions and other policymakers begin to wrestle with the issue of market abuses it will be important for them to obtain public input regarding the public's desire for more protective telecommunications rules. With regard to cramming, research questions could include the following:

- Do consumers want nontelecommunications services included on the LEC bill? Or do they prefer to pay for them by credit card?
- Do consumers want the LECs to be required to offer a service that blocks the placing of monthly recurring charges on consumer bills by third-party service providers?
- Do consumers want other state public utility commissions to follow the complaint-handling model of Tennessee? (This model requires the Division of Consumer Services, on receipt of a cramming complaint, to immediately contact the company in question on behalf of the consumer.)
- Do consumers want the personal responsibility of monitoring their LEC bills for potential fraud, deceptive practices, and market abuses?
- Do consumer protection organizations, which protect at-risk consumer groups, such as the elderly, the disabled, immigrant populations, etc., feel that all consumers are capable of adequately protecting themselves from potential fraud, deceptive practices, and market abuses?

In addition, attached to the challenges of halting cramming and other market abuses is the challenge of positioning state public utility commissions as protective organizations. Clearly, the policies and strategies that state public utility commissions

⁶⁵David W. Wirick, et al., *Transforming Public Utility Commissions in the New Regulatory Environment: Some Issues and Ideas for Managing Change*, 86.

use to address cramming will set the precedence for addressing other market abuses and refocus their role as protective organizations.

CHAPTER FIVE RECOMMENDATIONS

There is a need for federal and state regulators to introduce anti-cramming legislation. It is recommended that any federal anti-cramming legislation should establish a minimum "floor" of basic regulatory enforcement while allowing individual states to set the "ceiling," consistent with a set of principles that do not pose barriers to competition.

Such principles should include:

- Preservation of state enforcement.
- Elimination of subscriber liability of payment of any unauthorized charges.
- Penalties for offending companies.
- Strict procedures for third-party verification of authorization of charges.
- Strict procedures for authorization of services or charges.
- Strict rules for acceptable billing formats.
- Prohibition from local service disconnection for disputed unauthorized charges.

Based on these principles, the following recommendations are offered as suggestions to federal and state regulators developing cramming legislation.

1. Preserve state public utility commission authority to enforce cramming laws rules.

- Require all federal rules and legislation to reserve the authority of state commissions and state Attorneys General to enforce all prohibitions on cramming.
- Require all federal rules and legislation to reserve the right of state public utility commissions to establish rules for fraudulent telephone billing practices.

2. Provide penalties for violators and provide subscriber liability provisions

- Statutes should make it unlawful to bill a consumer for goods or services appearing on the LEC bill without authorization.
- Violators should be subject to civil penalties imposed by state commissions. Commissions should have the authority to suspend, restrict, or revoke a violator's certification or authority to provide services within the state.
- Provide the state public utility commission should have the authority to order a LEC and/or a billing aggregator to terminate billing and collection services to violators who fail to respond to commission staff requests for information.
- Disallow the LEC to disconnect the consumer's service for nonpayment of disputed unauthorized charges.
- Require LECs to respond to cramming complaints by instructing the billing aggregator, IXC, or the information service provider to prevent further billing of that charge or type of charge to the subscriber's account.
- Absolve the consumer of the responsibility for any unauthorized charges.
 - Preserve the consumer's right to dispute unlawful charges by ensuring that any time a consumer disputes a charge for the purchase of a service or product, the consumer will not be required to pay that charge until provided with both written documentary evidence of the validity of the charge and a written explanation as to why the charge is valid.
 - Require the billing aggregator and/or the LEC to refund or credit any unauthorized charges to consumers within a thirty-day period.
 - The consumer should not be rebilled for the charge. Penalties should be in place for violators who rebill consumers for the charges.
 - Require the party receiving the complaint (the billing aggregator or the LEC) to inform the consumer that the billing entity may use other methods to collect the charges, including a collection agency. The consumer should be given clear concise directions regarding what to do if this occurs.
- Disallow deceptive marketing methods. Penalties should be levied on service providers who use sweepstakes, contests, or other forms of deceptive marketing techniques, including deceptive telemarketing, to sell miscellaneous services.
- Impose penalties on LECs and billing aggregators who bill on behalf of service providers using deceptive marketing methods. LECs and billing companies should be required to carefully screen the marketing materials of the service providers whom they represent. Since the LECs and the billing aggregators share in the profits associated with the transactions, they should also share in the liabilities associated with the transactions.

- Require LECs and billing aggregators to submit all complaint data to the state public utility commission on a quarterly basis. Billing entities who receive complaints approve an established threshold should be fined, and if the complaints continue to exceed threshold levels, the LEC and/or the billing aggregator should be required to suspend or terminate their contract with the particular billing entity.
- Assess penalties to all entities(LECs, aggregators, service providers) whose complaint-handling function does not meet the predetermined call completion standards.

3. Restricting the use of telephone bills for only communications-related services

- Consider allowing only “communications-related” goods and services to be charged to a LEC bill, as is done in California.
- Require the billing parties to offer consumers the option of billing all noncommunications-related goods and services to a credit card, if policymakers choose not to restrict the LEC bill to only communications-related services.
- Require the LECs to offer and notify customers of a service that blocks the placing of monthly, recurring, and miscellaneous charges on telephone bills by third-party service providers.

4. Developing definitions of key terms

There appears to be discrepancy between what state public utility commissions and billing companies consider to be telecommunications services. Although some billing companies report to only bill for telecommunications services, these companies do bill for audiotext services.

- Clearly define terms such as telecommunications services, regulated, and nonregulated services.
- For each service billed to the LEC bill, clearly delineate whether or not policymakers consider it to be a telecommunications service, and whether or not they consider it to be a regulated or unregulated service.
- Promote collaboration between the NARUC Communications Committee and the Ad Hoc Committee on Consumer Affairs to create definitions and categories that could be used by all states.

5. Authorization of services or charges

- Clearly delineate who is allowed to authorize services or charges to appear on the LEC bill (only the subscriber or the subscriber and spouse).
- Require the LEC to provide clear written notification to subscribers of each initiation or change in service in accordance with the FCC Truth-In-Billing Rules.

6. Acceptable methods of verification

- Prohibit billing of any recurring or monthly charges by third parties without authorization from the subscriber. Written authorization is the recommended form of authorization. However, if a state chooses to allow oral authorization through an independent third-party verifier the guidelines for independent third-party verification described in Recommendation 7 must be adhered to.
- Require all letters of agency (LOAs) to be separate from any promotional material including sweepstakes and contest entry forms.

7. Guidelines for independent third-party verification⁶⁶

Require all independent third-party verifiers to:

- State at the beginning of the call that they are the third-party verifiers, hired by the telemarketer and that the purpose of the call is to verify the authorization of the services and charges.
- Record all conversations between the subscriber, the telemarketer, and the third-party verifier for legal purposes. This includes the consumer's verbal authorization for the services and charges. The third-party verifier must inform the consumer at the beginning of the call that all verbal transactions will be recorded unless the consumer wishes otherwise. States should uphold the current FCC rules that mandate the LEC to keep all recordings for a maximum of two years.
- Identify the name of the company offering the service.
- Verify that the person they are speaking to is the person or the spouse of the person whose name appears on the account.
- Obtain identification information from the subscriber. Policymakers should also clearly delineate the method that the third-party verifier will use to ascertain the identification of the authorizing individual (examples would be social security number, PIN, or date of birth).

⁶⁶The Guidelines are adapted from Jessica Zufolo, *NARUC Discussion Draft of a Federal Anti-Slamming Proposal*, April 9, 1999.

- Require the independent third-party verifier to be in a physically separate facility from the carrier. Third party verifiers will be prohibited from receiving commissions, bonus incentives, or any compensation for the number of sales made.
- Allow state public utility commissions to retain the options to draft full scripts, or review the scripts, for independent third-party verifiers who are hired by the service providers to obtain verification of services and charges.

8. Acceptable billing formats

- Bills must contain only subscriber authorized charges.
- Bills should be organized clearly and highlight new charges or changes in service.
- All charges should be completely described, and service providers should be clearly identified.
- Bills should specify the amount of charges for each product or service including taxes and surcharges.
- Bills should explain how to resolve disputes about charges, including the name, address, and toll-free telephone number of the charging party.
- Bills should provide a step-by-step descriptions of the dispute resolution process.
- Bills should provide the telephone number of the state public utility commission where a consumer may register a complaint.

9. Monitoring of billing aggregator complaint data

- Request all entities (billing aggregators, LECS, and service providers) to provide the state public utility commission with quarterly reports of subscriber billing complaints.
- Require the state public utility commission to conduct an investigation of any entity that whose complaint level exceeds a commission determined threshold.

10. Develop standards for screening marketing materials and product offerings of service providers

- Require LECs and billing aggregators to screen the marketing materials and product offerings of billing entities.
- Develop standards for LEC and billing aggregators to use when screening the marketing materials and product offerings of billing entities.

- Assess penalties by state public utility commissions to all parties involved when marketing materials of billing entities fall below commission standards.

11. Streamlining the complaint-handling process

- Require the LECs and/or the billing aggregators to remove any disputed charges from the consumers' bill.
- Require all entities involved in the complaint-handling process (the LECs, the billing clearinghouses, and the billing entities) to have adequately staffed 1-800 numbers.
- Require all entities involved in the complaint-handling process to have evening and weekend hours in which a customer can lodge a complaint.
- Require all entities involved in the complaint-handling process to do follow-up consumer satisfaction surveys with consumers to determine if their cramming complaint was adequately resolved. Require the re-opening of cases that were not resolved to the consumers' satisfaction.
- Develop call completion standards and for all entities involved in the complaint-handling function. Assess penalties for entities who do not meet the standards.

12. Consumer information and education

- Conduct consumer research
As we move forward into the new competitive environment, and as markets become receptive to new entrants and services, it will become important for state public commissions to assess the degree to which consumers want protective regulation to shield them from the potential abuses of unscrupulous marketers.
 - Require consumer research to include a wide range of hard-target populations including hard-to-reach populations such as the elderly, low-income, English as a second language, geographically hard-to-reach populations, the handicapped, etc.
 - Require consumer research questions to encompass questions such as:
 - What is the level consumer awareness of the problem of unauthorized phone charges?
 - Do consumers want noncommunications services to be included on the LEC bill?
 - Who do consumers want to be able to authorize charges on the LEC bill?

- How do consumers prefer that authorization of nontelecommunications services be verified? Do consumers prefer a PIN?
 - Do consumers prefer a one-stop complaint-handling process where the LEC is responsible for recording the charges?
 - What are consumer preferences for model bills?
 - Require field-testing of exemplary marketing materials of billing entities to determine if they are confusing or misleading. Develop industry standards as a result of this input.
- Consumer education

Research has indicated that consumers, particularly hard-to-reach populations, place tremendous trust in community-based organizations. Presently, many state public utility commissions are working with community-based organizations to do consumer education regarding energy restructuring. State public utility commissions should explore the possibility of working with community-based organizations to do the following consumer education activities:

 - Conduct workshops to train consumers how to examine their telephone bills or how to dispute unauthorized charges.
 - Work with the media to mitigate the problem by advising consumers of billing entities who are found guilty of cramming.
 - Provide training-the-trainer inservice or continuing education training for social workers and trainers from community-based organizations regarding the cramming problem.
 - Provide inservice cramming workshops for all complaint-handling staff at state public utility commissions and state attorneys general offices.

AB 2142 Public utilities: telecommunications: truth in b

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CHAPTER 1036

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INTRODUCED BY Assembly Member Brown (Principal coauthor: Senator Peace) (Coauthors: Assembly Members Ashburn, Bowen, Davis, Knox, and Machado) (Coauthors: Senators Hughes and Watson)

FEBRUARY 19, 1998

An act to add Section 2889.9 to the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2142, Brown. Public utilities: telecommunications: truth in billing.

(1) The telecommunications Customer Service Act of 1993 requires the Public Utilities Commission to require telephone corporations to provide customers with sufficient information upon which to make informed choices among telecommunications services and providers, as specified.

This bill would prohibit a person or corporation from misrepresenting its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase the products or services of the person or corporation, and having the charge for the product or service appear on the subscriber's telephone bill. The bill would specifically apply the penal provisions of the Public Utilities Act to the requirements of the act, and those set forth in SB 378 of the 1997-98 Regular Session, thereby expanding the scope of an existing crime and creating a state-mandated local program. The bill would prescribe related matters.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

SECTION 1. It is the intent of the Legislature that this act and Senate Bill 378 of the 1997-98 Regular Session be read together and serve as a deterrence to cramming.

SEC. 2. Section 2889.9 is added to the Public Utilities Code, to read:

2889.9. (a) No person or corporation shall misrepresent its association or affiliation with a

telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase the products or services of the person or corporation, and have the charge for the product or service appear on the subscriber's telephone bill.

(b) The provisions of Chapter 11 (commencing with Section 2100) of Part 1 of Division 1 apply to a public utility subject to this section and Section 2890. If the commission finds that a person or corporation or its billing agent that is a nonpublic utility, and is subject to the provisions of this section and Section 2890, has violated any requirement of this article, or knowingly provided false information to the commission on matters subject to this section and Section 2890, the commission may enforce Sections 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, and 2114 against those persons, corporations, and billing agents as if the persons, corporations, or billing agents were a public utility. Neither this authority nor any other provision of this article grants the commission jurisdiction to regulate persons or corporations or their billing agents who are not otherwise subject to commission regulation, other than as specifically set forth in this section and Section 2890.

(c) If the commission finds that a person, corporation, or billing agent is operating in violation of any provision of this section and Section 2890, the commission may order the billing telephone company to terminate the billing and collection services for that person, corporation, or billing agent. Nothing in this section and Section 2890 precludes a billing telephone company from taking action on its own to terminate billing and collection services.

(d) 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.

(e) If the commission receives more than 100 complaints regarding unauthorized telephone charges in any 90-day period as to a person, corporation, or billing agent's activities that are subject to Section 2890 and this section, the commission's consumer services division shall commence a formal or informal investigation. The commission, to further the purposes of Section 2890 and this section, may change the number of complaints in any 90-day period that initiates the commencement of an investigation. This subdivision does not prohibit the commission's consumer services division from opening any investigation it deems necessary to enforce Section 2890 or this section.

(f) Failure by a person, corporation, or billing agent to respond to commission staff requests for information is grounds for the commission to order the billing telephone company or companies that are providing billing and collection services to cease billing and collection services for the person, corporation, or billing agent.

(g) Persons or corporations originating charges for products or services, their billing agents, and telephone corporations billing for these products or services shall cooperate with the commission in the commission's efforts to enforce the provisions of this article.

(h) This section and Section 2890 do not obligate a billing telephone company to provide billing and collection services to a billing agent.

(i) The commission may adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article.

(j) For the purposes of this section, "billing agent" means the clearinghouse or billing aggregator.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIB of the

California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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Senate Rules Committee / California State Senate / WebMaster@sen.ca.gov

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INTRODUCED BY Senator Peace
 (Principal coauthor: Assembly Member Brown)

FEBRUARY 13, 1997

An act to add and repeal Section 2890 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, Peace. Public utilities: telephones.

Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including telephone corporations and other specified entities. Existing law requires a telephone corporation to comply with prescribed service and billing requirements.

This bill would require, until January 1, 2001, that a telephone bill contain only subscriber-authorized charges related to communications service, as specified. The bill, until January 1, 2001, would require bills for noncommunications-related goods and services to be billed separately from any telephone bill, but would permit those bills to be included within the same envelope as a telephone bill. The commission would be authorized to specify the kinds of noncommunications-related goods and services that may be billed in that manner. The bill would provide that the commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to specified telephone services. The bill would require a billing telephone company to clearly identify, and use separate billing sections for, each entity that generates a charge on a subscriber's telephone bill.

The bill would require any person, corporation, or billing agent, as defined, that charges subscribers for products or services on a telephone bill, and until January 1, 2001, on a bill for noncommunications-related goods and services that is included in an envelope with a telephone bill, to include in the bill the amount being charged for each product or service and to take other actions for the purpose of resolving a dispute concerning that charge. The bill would prescribe related matters.

The bill would make a related statement of legislative intent.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Reduce the inclusion of unauthorized charges on a telephone subscriber's bill, a practice known as "cramming."

(b) Clarify the rights and remedies available to California consumers with regard to telephone billing disputes.

(c) Provide California consumers with a consistent, effective, and easily accessible means of resolving disputes over unauthorized, inadvertent, misleading, or fraudulent charges that appear on their telephone bills.

(d) Encourage the verification of telephone charges.

(e) It is the intent of the Legislature that this act and Assembly Bill 2142 of the 1997-98 Regular Session be read together and serve as a deterrence to cramming.

SEC. 2. Section 2890 is added to the Public Utilities Code, to read:

2890. (a) A telephone bill may only contain charges for communications-related goods and services, including, but not limited to, wired and wireless communications service, Internet access, video service, information service, telephone equipment that is connected to a telecommunications network, and cable set top boxes. The commission may permit a billing telephone company to include in the same envelope with a subscriber's telephone bill, a separate bill for noncommunications-related goods and services. The commission may also specify the kinds of noncommunications-related goods and services that may be billed in this manner.

(b) A telephone bill, and a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, may only contain charges for products or services, the purchase of which the subscriber has authorized.

(c) Where a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(d) 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.

(e) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill, or on a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, shall do all of the following:

(A) Include, or cause to be included, in the bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name, address, and telephone number of the party responsible for generating the charge and a description of the manner in which a dispute regarding the

charge may be addressed, including the appropriate telephone number of the commission that a customer may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. 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. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(f) If an entity responsible for generating a charge on a telephone bill, or on a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(g) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.

(h) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. Section 2890 is added to the Public Utilities Code, to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) Where a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) 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.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) 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 any taxes

or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name, address, and telephone number of the party responsible for generating the charge and a description of the manner in which a dispute regarding the charge may be addressed, including the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. 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. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(e) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(f) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.

(g) This section shall become operative on January 1, 2001.

H.177

AN ACT RELATING TO TELECOMMUNICATIONS SERVICE
PROVIDERS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 30 V.S.A. § 227c is added to read:

§ 227c. NONDOMINANT CARRIERS

(a) The board may modify, reduce or suspend the requirements under this title as applied to nondominant providers of telecommunications service. The board may act by rule, or, after notice and opportunity for hearing, it may act by order. The modifications, reductions or suspensions may apply to one or more classes of nondominant providers, and may apply differently to each class. The board may modify, suspend or reduce any or all of the regulatory requirements under sections 104, 105, 107, 108, 109, 225, 226, 227(a), 229 and 311 of this title.

(b) In determining whether a carrier or class of carriers is nondominant, the board shall consider whether the carriers have sufficient market power to set prices for the market.

(c) In determining whether to modify, reduce or suspend regulatory requirements, the board shall consider whether competition in the market combined with the remaining requirements under this title:

(1) will be sufficient to ensure that the charges, practices, classifications or regulations related to the service are just and reasonable and are not unjustly or unreasonably discriminatory; and

(2) will afford the public at least as much protection as the applicable regulatory requirements being suspended or reduced.

(d) Upon petition of the department the board shall, and upon its own initiative the board may, investigate whether it should reimpose any regulatory requirements which it has modified, suspended or reduced under this section.

If the board finds, after notice and an opportunity for hearing, and after considering the factors identified in subsection (c) of this section, that the public is not sufficiently protected, the board may reimpose any regulatory provisions that the board deems necessary. Pending any final order, the board may reimpose any regulatory requirements on a temporary basis as it determines is just and reasonable.

(e) The board shall not exercise its authority under subsection (a) of this section until it has adopted consumer protections by rule or order.

Sec. 2. 30 V.S.A. § 231a is added to read:

§ 231a. REGISTRATION OF BILLING AGGREGATORS

(a) Definitions. As used in this section, unless the context otherwise indicates:

(1) "Bill" means a direct statement of payments due and any other form

of notice soliciting payment.

(2) “Billing agent” means a local exchange carrier or other person offering telecommunications service who includes in a bill it sends to a customer a charge for a product or service offered by a service provider.

(3) “Billing aggregator” means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent.

(4) “Service provider” means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(5) “Telecommunications carrier” means a company subject to the jurisdiction of the public service board under section 203(5) of this title.

(6) “Unauthorized service” means the provision of any service or product by a service provider that a customer has not authorized and for which a charge appears on the customer’s telephone bill. Charges for collect calls shall be exempt from this section.

(b) Registration requirements. Except as provided in this subsection, no billing aggregator may forward charges for a service or product offered by a service provider to a billing agent for presentation to a customer unless the billing aggregator is registered with the public service board. A registration properly filed with the public service board takes effect 14 days after the filing

date unless the public service department objects to the registration and provides notice of its objection to the registrant within the 14 days. If the public service department objects to the registration, the registration does not become effective unless expressly approved by the public service board. The public service board shall offer a person whose registration has been rejected an opportunity for a hearing. A registration, once effective, remains effective until revoked by the public service board or surrendered by the holder. A company that provides telecommunications service in this state pursuant to a certificate of public good or equivalent authority under this title is not required to be registered under this subsection.

(c) Revocation of registration; notice.

(1) After opportunity for a hearing, the public service board may revoke the registration of a billing aggregator who has:

(A) provided false or deceptive information in registering under this section;

(B) knowingly, negligently or repeatedly forwarded a charge to a billing agent for a product or service that the consumer did not authorize;

(C) failed to provide a notice to customers as required by rule or order of the public service board, or otherwise failed to comply with a rule or order of the public service board; or

(D) engaged in any other false or deceptive practices.

(2) Immediately following a revocation of registration under this subsection, the public service board shall provide notice of the revocation, in a form and manner established by the public service board by rule, to all telecommunications carriers doing business in this state.

(d) Procedure upon complaint. If a customer of a telecommunications carrier claims that a charge for an unauthorized service has been included in the customer's telephone bill, the telecommunications carrier shall immediately suspend collection efforts on that portion of the customer's bill. The telecommunications carrier shall either cease collection efforts entirely with regard to the disputed charge or request evidence from the billing aggregator that the customer authorized the service for which payment is sought. If the telecommunications carrier ceases collection efforts or sufficient evidence of customer authorization is not presented to the telecommunications carrier within a reasonable time, the telecommunications carrier shall immediately remove any charges associated with the unauthorized service from the customer's bill and refund to the customer any amounts paid for the unauthorized service that were billed by the telecommunications carrier during the six months prior to the customer's complaint. If sufficient evidence of customer authorization is provided to the telecommunications carrier, the telecommunications carrier may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the billing aggregator may

appeal the telecommunications carrier's determination to the public service board.

(e) Enforcement authority. In addition to any other authority the public service board may have pursuant to other law, the public service board may enforce the provisions of this section in accordance with this subsection:

(1) In an adjudicatory proceeding, the public service board may impose an administrative penalty upon the following entities for the following violations:

(A) a billing aggregator who forwards charges to a billing agent for an unauthorized product or service;

(B) a billing aggregator who is required to be registered under subsection (b) of this section and who is not properly registered pursuant to that subsection and who forwards charges for a product or service that appear on the bill of a billing agent;

(C) a billing agent who knowingly bills on behalf of a billing aggregator who is required to be registered under subsection (b) of this section and who is not properly registered pursuant to that subsection at the time the bill which is to be sent to the customer is generated, except that a billing agent who bills on behalf of a billing aggregator whose registration has been revoked shall not be subject to administrative penalty if the bill which is to be sent to the customer was generated within 14 days of the revocation of the registration

and the billing agent did not have actual notice of the revocation;

(D) a telecommunications carrier that, without having first obtained evidence of authorization that the telecommunications carrier believed in good faith to be sufficient, does not remove the charges for any service which is the subject of a complaint under subsection (d) of this section and does not refund to the customer any amounts paid for the unauthorized service that were billed by the telecommunications carrier during the six months prior to the customer's complaint. For purposes of this section, evidence that a call was dialed from the number that is the subject of the charge shall be considered sufficient evidence of authorization for that call.

(2) The amount of any administrative penalty imposed under subdivision (1) of this subsection may not exceed \$1,000.00 per violation arising out of the same incident or complaint and must be based on:

(A) the severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(B) the history of previous violations; and

(C) the amount necessary to deter future violations.

(f) Rulemaking. The public service board shall adopt such rules as it deems necessary to implement this section.

Sec. 3. 9 V.S.A. § 2465 is added to read:

§ 2465. GOODS AND SERVICES APPEARING ON TELEPHONE BILL

(a) No seller shall bill a consumer for goods or services that will appear as a charge on the person's local telephone bill without the consumer's express authorization.

(b) No later than the tenth business day after a seller has entered into a contract or other agreement with a consumer to sell or lease or otherwise provide for consideration goods or services that will appear as a charge on the consumer's local telephone bill, the seller shall send, or cause to be sent, to the consumer, by first-class mail, postage prepaid, a notice of the contract or agreement.

(c) The notice shall clearly and conspicuously disclose:

(1) The nature of the goods or services to be provided;

(2) The cost of the goods or services;

(3) Information on how the consumer may cancel the contract or agreement;

(4) The consumer assistance address and telephone number specified by the attorney general;

(5) That the charges for the goods or services may appear on the consumer's local telephone bill; and

(6) Such other information as the attorney general may prescribe by rule.

(d) The notice shall be a separate document sent for the sole purpose of providing to the consumer the information required by subsection (c) of this section. The notice shall not be combined with any sweepstakes offer or other inducement to purchase goods or services.

(e) The sending of the notice required by this section is not a defense to a claim that a consumer did not consent to enter into the contract or agreement.

(f) No person shall arrange on behalf of a seller of goods or services, directly or through an intermediary, with a local exchange carrier to bill a consumer for goods or services unless the seller complies with this section. This prohibition applies, but is not limited to, persons who aggregate consumer billings for a seller and to persons who serve as a clearinghouse for aggregated billings.

(g) Failure to comply with this section is an unfair and deceptive act and practice in commerce under this chapter.

(h) The attorney general may make rules and regulations to carry out the purposes of this section.

(i) Nothing in this section limits the liability of any person under existing statutory or common law.

(j) This section does not apply to sellers regulated by the Vermont public service board under Title 30, other than section 231a of Title 30. Nothing in this section affects any rule issued by the Vermont public service board.

Sec. 4. 30 V.S.A. § 208b is added to read:

§ 208b. UNAUTHORIZED BILLING

A company subject to the jurisdiction of the public service board shall not send a bill to a consumer for goods or services that the company provides and that will appear as a charge on the consumer's telecommunications bill without the consumer's express authorization. A company that violates this section shall be subject to the remedies authorized by this title, including penalties authorized by section 30 and injunctions authorized by section 209.

Sec. 5. TRANSITION

30 V.S.A. § 231a shall take effect on July 1, 1999, except that no person shall suffer a penalty under 30 V.S.A. § 231a(d) as to any telecommunications billing for a service rendered before October 1, 1999.

*ANTI-CRAMMING CONSUMER PROTECTION STANDARDS OF PRACTICE
OF THE COALITION TO ENSURE RESPONSIBLE BILLING ("CERB")*

Cramming is the addition of charges to a telephone bill for programs, products or services the consumer did not knowingly authorize.

In order to protect consumers from unauthorized, deceptive or ambiguous charges on their telephone bills, signatories hereto adopt and agree to be bound by the following Anti-Cramming Consumer Protection Standards of Practice.

- **PRE-SCREENING OF PROVIDERS AND SERVICES**

Signatories commit to pre-screening all prospective service providers and the programs, products and services they offer.

- **SCREENING OF PROVIDERS**

Signatories will require as a precondition for any business relationships the following information:

- Service provider company name and address.
- Names of officers and principals of the company.
- Proof of corporate or partnership status.
- Copies of certifications as required.
- Foreign corporation filings as required.
- Any information regarding whether the company, its affiliates and/or its officers or principals have been subject to prior conviction for fraud or have had billing services terminated.
- That any tariffs be made available on request.
- The names of any telemarketing companies to be used by the service provider.
- The names of any third party verification companies to be used by the service provider.

- **SCREENING OF PROGRAMS, PRODUCTS AND SERVICES**

Signatories will require the following information:

- Marketing materials.
- Advertisements (print or other media).
- Applicable fulfillment package (which must include cancellation information if not included elsewhere and a toll free customer service telephone number).
- Scripts for both sales and validation.
- Honest, clear, and understandable text phrase for telephone bill.

Signatories will not knowingly provide billing for services employing the following practices:

- Box, sweepstakes, or contest - type entry forms.
- Negative option sales offers.
- 800 pay per call.
- Collect callback.
- Phantom billing (charging for calls never made or services never provided).
- Such other programs, products or services Signatories Determine to be deceptive or anti-consumer.

Each Signatory will maintain an internal standards committee to review the information collected for both providers and programs. Members of these committees will have no vested sales interest in the acceptance of a service, product or program.

- **COMPLIANCE MONITORING**

In order to better police the business practices of its service providers and to assure the efficiency of its screening procedures, Signatories commit to engage in active monitoring of providers and programs. Signatories will:

- Monitor consumer inquiries.
- Monitor consumer complaints to government agencies.
- Monitor escalated complaints to the local exchange carrier.
- Maintain up-to-date records regarding complaints and inquiries.
- Adopt action plans to respond to complaints and inquiries.
- Notify service providers of complaints or inquiries.
- Coordinate investigations with service providers.
- Each Signatory shall take such disciplinary action as each determines is appropriate under the circumstances.

- **MANDATORY AUTHORIZATION**

It is critical that consumers can depend upon their authorization for the service, product or program for which they will be billed. Signatories will require service providers to employ one of the following forms of authorization:

- Independent Third Party Verification, or
- Written Letter of Authorization or Sales Order, or
- Voice recording of telephone sales authorization.

A valid authorization must include:

- The date.
- The name, address and telephone number of the consumer.
- Assurance that the consumer is qualified to authorize billing.
- A description of the product or service.
- A description of the applicable charges.
- An explicit consumer acknowledgment that the charges for the product or service will appear on the telephone bill.
- The acceptance by the consumer of the offer.

● **CONSUMER-FRIENDLY BILLING PRACTICES**

Central to a consumer's right to ensure that they have not been crammed is the ability to understand and read the telephone bill. Signatories agree that informed consumers can better protect themselves from unauthorized products or services. Signatories will support providing consumers a bill that can be easily understood.

Consumer bills should include:

- A clear identification of the billing entity
- A clear identification of the service provider.
- A clear description of products or services.
- A clear identification of the charges.
- The toll free telephone number that subscribers may call to make inquiries concerning the billing.

● **CONSUMER SATISFACTION**

Consumers must be able to easily and quickly discuss problems. Signatories are committed to monitoring consumer satisfaction particularly with regard to any disputes or inquiries that may arise. Signatories will provide quick and thorough responses.

Signatories shall provide on request:

- The name, address, phone number and fax number of the service provider.
- The nature of any charge.
- The method of authorization.
- Information as to how a consumer may cancel a service or product.

In addition, in order to facilitate resolution of disputes. Signatories will:

- Provide a toll free customer service number.
- Provide dedicated staff to respond to consumer inquiries.
- Provide a full and timely investigation of any dispute.
- Initiate a credit or respond to the consumer within 30 days of the consumer's dispute.
- Not rebill on a local exchange carrier telephone bill charges previously credited.

● **DISCLOSURE**

Signatories will share with each other and, upon request, with federal and state enforcement agencies:

- Identifying information with respect to terminated service providers and programs.
- A description of specific practices relating to cramming that the Signatories have encountered, and the steps being taken by the Signatories to correct them.
- Aggregate data with regard to complaints filed with federal and state government authorities received by Signatories.

On October 1, 1998, a copy of these Standards of Practice and a list of all Signatories will be sent to the Federal Communications Commission, the Federal Trade Commission and all state Public Utility and Service Commissions and each state Attorney General.

Signatories:

| | | |
|---------------------------|----------------------------|------------------|
| Federal Transtel | OAN Services | Billing Concepts |
| HBS Billing Services | ILD Teleservices | Integretel |
| National Billing Exchange | Olympic Telecommunications | USP&C |

The Coalition to Ensure Responsible Billing was formed by the United States' leading billing clearinghouses in an effort to combat consumer fraud on the local telephone bill.

For more information contact:

*Jacqueline Mitchell, Billing Concepts: 210-949-7000
Ronald F. Evans, OAN Services: 818-678-4730
Tory Center, FTT: 800-382-8669*

[[Text Version](#) | [WordPerfect Version](#) | [Acrobat Version](#)]

ANTI-CRAMMING BEST PRACTICES GUIDELINES

Consumer Summary

Introduction

On April 22, 1998, William Kennard, Chairman of the Federal Communications Commission (FCC), invited a group of the largest local exchange carrier (LEC) providers of billing and collection services, along with representatives of USTA, ALTS, and CompTel, to participate in a workshop to develop a set of guidelines that represent best practices to combat the problem known as "cramming". Cramming refers to the submission or inclusion of unauthorized, misleading, or deceptive charges on consumers' local telephone bills. The billing relationship between the Service Providers and the LECs stems from the fact that many LECs bill their local telephone customers for some services provided by others such as long distance carriers and information service providers, pursuant to contracts and/or tariffs.

The cramming problem has increasingly been receiving a great deal of attention from federal and state legislators, regulatory agencies, and law enforcement agencies. In his April 22 letter to prospective workshop participants, Chairman Kennard expressed his strong concern over the rate at which consumers are experiencing cramming. In addition to the consumer harm caused by cramming, Chairman Kennard recognized the harm that cramming causes the LECs, both in the costs incurred by the LECs and the damage caused to the LECs reputations with consumers. Chairman Kennard expressed the willingness of the FCC staff to assist the workshop in its efforts, and to provide a neutral forum for the workshop's activities. In his opening remarks at the initial workshop meeting on May 20, 1998, Chairman Kennard described cramming as a serious problem that is likely to become even more serious in the near future. He urged the workshop participants to come up with a way to handle this growing problem. FCC Commissioner Susan Ness also spoke to the workshop participants about the cramming problem.

At the May 20 meeting, the workshop participants were also addressed by Congressman Bart Gordon of Tennessee, who echoed the concerns of Chairman Kennard about the serious consumer problem represented by cramming. Congressman Gordon characterized cramming as the fastest growing consumer fraud, and one that affects the most vulnerable consumers.

The workshop participants uniformly concur with the views of Chairman Kennard and Congressman Gordon concerning cramming. The workshop participants are committed to seeking ways to eliminate cramming and prevent the substantial harm that cramming is causing to consumers. In addition, as pointed out by Chairman Kennard, the workshop participants recognize that cramming results in substantial harm to the LEC providers of billing services. Cramming causes the LECs to incur significant cost and effort to investigate and resolve the numerous individual consumer complaints. In addition, because many consumers view the LECs (rather than the Service Providers) as imposing these improper charges, cramming damages the LEC's reputation and hurts consumer confidence in the LEC.

Various individual LECs have already developed and implemented a number of measures designed to remedy the cramming problem. Despite these efforts, however, the cramming problem has continued to grow. As recognized by the FCC in deciding to convene this workshop, a more elaborate, comprehensive effort that makes use of the collective experience and ideas of the participants is necessary in order to have a meaningful impact on cramming.

The guidelines set out below represent the culmination of the workshop's efforts to identify best practices designed to prevent, deter, and eliminate cramming. Although the guidelines were jointly developed by the workshop participants, the decision of whether, and to what extent, to implement any or all of these guidelines is an individual company decision to be made by each LEC unilaterally.

The cramming problem that led to the convening of this workshop stems from the submission of charges

by third parties to LECs for inclusion on consumers' local telephone bills, and does not involve billing for services provided by the LECs. Thus, the guidelines are intended to deal solely with cramming by third parties. While the scope of these guidelines is third party billing on the LEC bill, the LECs affirm their responsibility to ensure that consumers are afforded basic billing rights for all billing on the local telephone bill, including the LEC's own. These consumer rights include:

- (1) a clear, concise description of services being billed,
- (2) full disclosure of all terms and conditions,
- (3) billing for authorized services only, and
- (4) prompt and courteous treatment of all disputed charges.

In addition, effective regulatory mechanisms are in place today to deal with any problems caused by the billing of products or services provided by the LECs.

There is no single cure for the cramming problem. These guidelines offer various methods for combating cramming. It is not expected that any LEC would need to implement all these best practices, or any particular best practice. Rather, it is expected that the maximum consumer benefit will result from each LEC choosing from among these best practices those that best suit its individual circumstances. Further, it is not intended that the identification of the best practices set out below would preclude the implementation of other practices reasonably calculated to address cramming problems.

If a LEC chooses to implement a particular best practice, it is expected that such practice will be implemented in an objective, fair, and equitable manner.

Definitions of Commonly Used Terms

For purposes of these guidelines, the following definitions shall apply:

Billing and Collection Customer (B&C Customer): Any entity who submits billing information under contract to the LEC to be included on the End-user Customer's billing statement.

Clearinghouse: Billing and collection customers that aggregate billing for their Service Provider customers and submit that billing to the LEC.

Cramming: The submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on End-user Customers' local telephone bills.

End-user Customer: The party (i.e., the consumer) identified in the account records of a local exchange carrier issuing a telephone bill (or on whose behalf a telephone bill is issued), any other person identified in such records as authorized to change the services subscribed to or to charge services to the account, and any person contractually or otherwise lawfully authorized to represent such party.

End-user Customer Complaint: An oral or written communication between an End-user Customer and an authorized representative of a LEC where the customer identifies an unauthorized, deceptive or misleading charge, or charges.

Local Exchange Carrier (LEC): The local telephone company (this would include CLECs) that renders the bill to the End-user Customer.

Service Provider: The party that offers the product or service to the End-user Customer and directly or indirectly sends the billable charges/credits to the LEC, for billing to the End-user Customer.

SubCIC Entity (SubCIC): A Service Provider that is a customer of a Clearinghouse and has no direct (or contractual) relationship with the LEC.

Best Practices Guidelines

The following best practices guidelines present options that can be considered for Billing and Collections processes, procedures and contracts.

I. Contract Provisions

A. Screening - Products and Service Providers

1. Products to be Billed - An appropriate practice for charges that are placed on the local telephone bill would be to include those approved charges that are related to telecommunications and information services and other services approved by the LEC.
2. Each LEC should consider establishing criteria to help Service Providers identify problematic programs. Some programs that have a history of problems include the following:
 - Programs advertised via "box" or sweepstakes/contest entry forms
 - Programs initiated via "assumptive sale" or "negative option" plans
3. Product Screening - For the purposes of identifying programs that may be deceptive or misleading or otherwise not in compliance with applicable LEC policies, the LEC should consider requiring a comprehensive product screening and text phrase review/approval process. Material submitted to a LEC should be reviewed by the LEC in a timely manner. The LEC should require the Service Provider to furnish various data, including but not limited to the following:
 - Suggested text phrase language for bill presentation
 - The name, date and issue number for any publication(s) in which the product or service will be advertised
 - Advertisement placement plans
 - Copy of actual advertisement (print advertisement, tape of radio or television advertisement, etc.)
 - Internet web page address where product or service will be advertised or where the End-user Customer may subscribe to the product or service
 - Detailed description of how the product is ordered, including any telemarketing scripts (if telemarketing is used)
 - Detailed description of how the product can be canceled
 - Detailed description of how the End-user Customer can generate questions, request adjustments, etc., including a description of how such requests will be accommodated
 - Copy of actual post sale fulfillment documentation

As part of the screening process, the LEC should consider determining that all promotional and marketing materials:

- clearly and accurately describe the services being purchased

- clearly and conspicuously disclose all material terms and conditions of the offer, including without limitation,
 - the amount of the charge which will be billed to the End-user Customer's telephone bill
 - if the charge is a recurring charge, the frequency of billing and any minimum time interval for which the End-user Customer will be billed
- clearly and conspicuously disclose that the charges will appear on the End-user Customer's telephone bill
- do not contain any information which is false, misleading or deceptive
- 4. The LEC should consider developing a process to ensure that only pre-approved text phrases are applied to the End-user Customer's telephone bill. For example, the LEC could develop a process whereby text codes and a text code table/mechanized process are used to control the application of charges on the End-user Customer's telephone bill.
- 5. Service Provider - The LEC should consider developing an approval process for the addition of subCICs. The types of data to be supplied by the Clearinghouse may include, but are not limited to, the following:
 - SubCIC Company Name
 - SubCIC Company Address
 - SubCIC Company Officer Names
 - State of Incorporation
 - Public Utility/Service Commission certification, as required
 - State registration for each state for which billing will be submitted
 - Information regarding whether the company, its affiliates and its principals or any company that its principals have been associated with have been subject to prior conviction for billing related or other consumer fraud, had access to billing services terminated or been denied access to billing services
 - Type of data to be billed
 - Estimated number of customers to be billed
 - Inquiry company name and address
 - Inquiry procedures
 - Names of other companies with whom they have a billing contract
 - Number of complaints and adjustments associated with other billing companies

B. Sample General Contract Provisions

The LEC should consider implementing the following general contract provisions:

1. The LEC has and maintains discretion for charges that appear on its local telephone bill.

2. The B&C agreement is between the LEC and the B&C Customer. In those instances where the B&C Customer is a Clearinghouse, the Clearinghouse is directly responsible for the actions of its customers (i.e., the subCICs).
3. The B&C customer, by signing the B&C contract, agrees to abide by the terms and conditions of the contract and the LEC's billing policies. If the B&C Customer is a Clearinghouse, it shall hold its customers equally responsible for upholding the terms and conditions of the contract.
4. The LEC reserves the right to modify its billing policies based upon regulatory agency rules, End-user Customer complaint levels, as well as any negative impact to the LEC's image or reputation.
5. Should the LEC billing policies change, a minimum of 30 days written notice shall be provided to each B&C Customer.
6. The LEC reserves the right to review and re-evaluate any previously approved product or service.
7. The Service Provider shall submit to the LEC billing records only for those products or services that have been approved by the LEC. If a request to bill for a product or service is rejected, the Service Provider may not send charges for said product or service to the LEC for billing (i.e., the rejected product or service must not be misrepresented as a different product or service).
8. The LEC reserves the right to terminate the B&C contract, either in its entirety or for an individual Service Provider's subCICs, if the Service Provider and/or the subCIC is found to be in breach of the contract.
9. The LEC reserves the right and authority to immediately suspend billing for Service Providers or programs whose billing generates customer complaints that indicate a pattern consistent with cramming.

C. Service Level Thresholds

1. The LEC should consider establishing a complaint threshold to be applied at the Service Provider or subCIC level.
2. The LEC should consider establishing an adjustment threshold to be applied at the Service Provider or subCIC level.
3. "Inquiry Service" is an optional B&C service offered by the LECs for a fee that enables the LEC customer service representatives to discuss and resolve questions from End-user Customers about the B&C customer's service. Most B&C customers do not purchase the LEC Inquiry Service, choosing instead to offer customer service directly to their subscribers. For those B&C contracts that are without Inquiry Service, the LEC should consider establishing an End-user query threshold (based on an acceptable number of calls from End-user Customers into the LEC's customer contact centers regarding questions or issues on the specific Service Provider's charges).
4. In implementing the above mentioned thresholds, the LEC should consider including requirements for written notification to the billing and collection customer if a threshold is exceeded, a cure period (that could include suspension) for a specific period of time to allow the situation to be remedied, assessment of administrative charges and a contract termination provision.

- a. The notification letter should document the acceptable threshold and that the specific threshold has been exceeded, and that appropriate administrative charges are applicable and will be assessed.
- b. The notification letter should advise the billing and collection customer of the cure period length, start and end dates, and that the number of complaints, adjustments, or queries must be below the applicable threshold by the end date of the cure period.
- c. The notification letter should advise the B&C Customer that if the above mentioned results are not obtained by the end of the cure period, the contract, either in its entirety or for specific subCICs, will be terminated.

D. Administrative Charges

The LEC should consider imposing appropriate compensatory administrative charges when the above described service level threshold(s) (for complaints, adjustments or queries) are exceeded. There are a number of appropriate methods for calculating the dollar amount of any such charges. One possible methodology is as follows:

- The complaint, adjustment, or query threshold administrative charge could be calculated by the LEC on a P X Q (i.e., price multiplied by quantity) basis and could be assessed for each complaint, adjustment or query that exceeds the threshold.

In addition, the LEC should consider assessing an administrative charge when a charge for a product or a service not approved by the LEC is placed on the End-user Customer's bill.

In an effort to assist the Clearinghouses in their efforts to identify problematic subCICs, consideration should be given to computing and reporting these charges at the subCIC level.

E. Settlement Process Modification

The LEC should consider settlement process modifications, that could include the following:

1. Higher billing charges when thresholds are exceeded (e.g., a sliding scale based on threshold level).
2. A Purchase of Accounts Receivable (PAR) reserve account for post billing adjustments, based upon a percentage of billed revenue for each Service Provider who exceeds a predetermined level of adjustments.
3. A longer settlement cycle for Service Providers who submit primarily pay per call traffic or miscellaneous (i.e., EMI 42) charges.
4. A process to recourse adjustments for any non-deniable charges that are unpaid after being on the End-user Customer's telephone bill for a period of 90 days.

F. Clear Criteria for Clearinghouse Function

As mentioned above, Clearinghouses are billing and collection customers that aggregate billing for their subCIC customers and submit that billing to the LEC, on behalf of the subCIC(s). Experience has shown that many of the cramming problems have occurred on charges originating at the subCIC level. Therefore, to have a meaningful effect on cramming, the LEC should consider establishing criteria for Clearinghouse responsibilities, as follows:

1. The Clearinghouse should be responsible for activities performed by their subCIC customers.
2. The Clearinghouse should ensure that the only charges that are submitted for each subCIC

are those that have been approved for billing through the LEC's program approval process.

3. The Clearinghouse should provide adjustment reports for each of their subCICs to the LEC. The data to be provided on these reports should be, at a minimum, subCIC name and identification number, number of adjustments, adjusted revenue, number of accounts billed and revenue billed.
4. The Clearinghouse contract with their subCICs should ensure that the LEC has the right to audit the Service Provider and/or the subCIC data used to provide the above referenced reports. A copy of this contract provision should be provided to the LEC.

G. Confidentiality

The LEC should consider establishing procedures to preserve the confidentiality of proprietary information furnished to the LEC as part of the screening process. Such procedures should include limiting the use and disclosure of such information to the performance by the LEC of the product screening function and the provision of billing and collection services. In addition, the LECs should consider a contract provision to maintain the confidentiality of such proprietary information furnished to the LEC, to the extent consistent with legal or regulatory requirements. Information or data which is in the public domain or becomes available to the LEC from a source other than the service provider should not be considered proprietary or confidential.

H. Disclosure of End-user Customer Complaints and Aggregate Adjustment Data

The LEC should consider a contract provision that expressly permits the LEC to disclose the categories of data described in detail in item III below.

I. Other Contract Provisions

1. The LEC should consider a contract provision that requires each billing and collection customer to provide the LEC with requested information about their (or any Service Provider that is billing through that B&C customer) operating history related to cramming in other geographic areas.
2. The LEC should consider a contract provision that allows the LEC to reserve the right to impose additional controls, as deemed necessary, in order to address new forms of cramming.
3. The LEC should consider a contract provision to indicate that the LEC has sole discretion to determine if due to cramming practices its reputation has been harmed. If the LEC determines its reputation has been harmed or may be harmed, the B&C contract may be terminated.
4. The LEC should consider a contract provision to allow the B&C contract to be terminated if it is determined that the Service Provider sold a product or service to the end-user while misrepresenting themselves as the LEC or an agent of the LEC.

II. Process for Authorization/Verification of End User Approval

It is recognized that both the LEC and the Service Provider have a direct relationship with the consumer, and therefore have a responsibility to ensure that no unauthorized non-message telephone service charges are assessed via the LEC bill. However, it is the Service Provider's responsibility to inform End-user Customers of rates, terms, and conditions of its services and to obtain and retain the necessary End-user Customer authorization and verification as set out below.

To ensure that End-user Customers are appropriately informed of Service Provider rates, terms and conditions, the LEC should consider obtaining assurance from the Service Provider that the following

processes and conditions are met by the Service Provider for authorization and verification of a Service Provider non-message telephone service charge.

- A. A Service Provider should submit for billing on the End-user Customer's telephone bill only charges for products or services that are authorized by the End-user Customer and charges that are required by regulatory or governmental authority (such as the subscriber line charge and taxes).
- B. A Service Provider that is the End-user Customer's preselected provider of toll or local telephone service may submit other charges for customer-used or requested telecommunications-related products or services without additional documented authorization.
- C. Where the End-user Customer's authorization is to be obtained, it should be documented through one of the following formats:
 1. A voice recording of the entire and actual conversation with the End-user Customer.
 2. A written and signed document.
 3. Independent third party verification.
- D. The documented authorization should contain, at a minimum, the information set out below. Information contained in any communications with consumers should be provided in a clear and conspicuous manner.
 - Date
 - Name and telephone number of the End-user Customer
 - Question and answer to ensure that the End-user Customer is qualified to make the requested changes and to authorize billing
 - Question and answer regarding the End-user Customer's age, to ensure that authorization is provided by an of-age End-user Customer
 - Explanation of the product/service being offered
 - Explanation of all applicable charges
 - Explicit End-user Customer acknowledgment that said charges will be assessed via the telephone bill
 - Explanation of how a service or product can be canceled
 - Description of how the charge will appear on the telephone bill
 - Information related to whom to call (and the appropriate toll-free telephone number) for inquiries
- E. The documented authorization should be retained for a period of not less than 2 years.
- F. Upon request, the documented authorization should be made available by the Service Provider to the LEC, regulatory or government agency, or End-user Customer in a timely manner.
- G. Failure to comply with the above provisions should be considered a breach of contract, for which the B&C contract may be terminated.

III. Disclosure of Information

- A. Each LEC should consider providing various categories of information upon request to those federal and state public utility commissions and law enforcement agencies that request such information, as well as to other LECs. The LEC should consider providing this data at the subCIC level, if available. Examples of such information could include:
1. A description of the specific practices relating to cramming that the LEC has encountered, and the steps being taken by the LEC to deal with such practices. This is intended to be general information that does not identify the entities that have allegedly engaged in the described practices.
 2. The identity of Service Providers either terminated or notified of a need to cure due to cramming related problems.
 3. Aggregate escalated complaint data, by billing and collection customer, received by the LEC. Escalated complaints are those complaints issued by the End-user Customer to any regulatory or law enforcement agency (such as the FCC, FTC, a state Attorney General, or a public utility/service commission), or to a LEC executive officer or news organization.

Aside from the beneficial regulatory and law enforcement goals that the disclosure of such information would serve, the LECs have a significant interest in obtaining the information submitted by others that relates to the LECs' current billing and collection customers as well as prospective billing and collection customers. Among other things, such information would permit the LECs to do the following:

1. Develop more efficient, effective and less costly methods for detecting, preventing and eliminating cramming.
2. Reduce the costs to End-user Customers and the LECs associated with cramming.
3. Better evaluate the cramming risks posed by prospective billing and collection customers.
4. It should be emphasized, however, that the decision of what, if any, action to take based on the information obtained from this process is an individual company decision to be made by each LEC unilaterally.

- B. The Clearinghouses and Service Providers should consider collecting and disclosing similar data to that described in Section III.A., above.

IV. End-User Customer Dispute Resolution Process

Each LEC should consider establishing an End-user Customer Dispute Resolution Process. For example:

- A. With respect to charges for which failure to pay will not result in disconnection of local telephone service (e.g., non-deniable), the LEC should consider responding to End-user Customer complaints of having been crammed with an immediate recourse adjustment (i.e., the End-user Customer will not be requested to contact the Service Provider).
- B. Once the charges have been removed from the End-user Customer's telephone bill, they may not be re-billed by the Service Provider via the local telephone bill.
- C. If the End-user Customer contacts the Service Provider, rather than calling the LEC, with a complaint of having been crammed, the Service Provider must agree to provide a credit adjustment to the telephone bill. Any further collection attempts on the part of the Service Provider should not involve the telephone bill.
- D. Credit adjustments (for any charges that were originally billed via the telephone bill) should be applied to the End-user Customer's phone bill. The adjustment should not be provided via a check

paid directly to the End-user Customer, unless otherwise specified by a regulatory or government agency or unless the End-user Customer no longer has a billing account with the LEC.

- E. The LEC reserves the right to adjust the End-user Customer's telephone account for any non-deniable charges that remain on the End-user Customer's account and are unpaid for greater than 90 days.

The LEC should also recognize the potential for abuse by End-user Customers in the dispute resolution process and should take this into account in developing appropriate dispute resolution mechanisms.

V. Enforcement of Compliance with Existing Laws by Government Agencies

Upon appropriate request from regulatory, government, and/or legislative bodies, the LEC should provide documentation regarding Service Provider billing and collection contract violations.

VI. Bill Format

An End-user Customer's rights will be upheld and the End-user Customer's telephone service will not be disconnected for failure to pay non-deniable charges. Prior to disconnection of service for other appropriate reasons, an End-user Customer rights/advisory message should be displayed on the bill or other notification upon which the non-deniable charges appear.

The LEC should consider modifications to the Bill Format that include:

- A. Each Service Provider and any of their subCICs should be adequately identified on the End-user Customer's telephone bill.
- B. The bill pages should adequately display the toll free number that the End-user Customer is to call with any questions, requests for credit, etc.
- C. Non-deniable charges should be uniquely identified as such.

VII. Consumer Billing Controls

The workshop participants believe that consumers should have the ability to avoid the inclusion of unauthorized service or product charges on their local telephone bills. The LEC should consider retaining the right, at the request of an End-user Customer, to limit which End-user Customers may receive billing as a result of a B&C contract.

The workshop participants recognize that there are significant implementation issues associated with such controls. Needed mechanization presents significant technical challenges and costs and will require an extended period of time to implement. To avoid abuse by consumers, a method to notify Service Providers would have to be developed for use in conjunction with allowing consumers the ability to "block" billing on the LEC bill. Most importantly, to effectively block at a Service Provider level, there would have to be a universally assigned, nationwide subCIC designated for each Service Provider. This is an industry wide issue.

Despite these challenges, however, consumer-designated billing options can be an extremely powerful method of controlling third party cramming on the LEC bill and should be actively pursued.

Individual LECs may opt, in the short-term, to implement internal processes that would give consumers some limited control over miscellaneous charges and their appearances on a LEC bill.

VIII. End-user Customer Education

The workshop's participants recommend the following as potential End-user Customer education

initiatives:

- A. Bill Inserts - Develop a bill insert that reinforces knowledge and education on "how to read the LEC bill," defines cramming and advises the End-user Customer on what can be done to avoid being crammed, who to call if they do get crammed, what to expect, etc.
- B. Page Left Intentionally Blank - Utilize the "this page left intentionally blank" pages of the End-user Customer's bill, in the same manner as described for bill inserts in section VIII.A, above.
- C. Web Page - Modify the LEC's WWW page to include an End-user Customer advisory message regarding cramming, as described above.
- D. Telephone Directories - Develop text for printing in the "useful information" portion of the LEC's telephone directories, to contain the same type of information described above.

[[Text](#) | [WordPerfect](#)]

CONSUMER INFORMATION

Federal Communications Commission, 1919 M Street NW, Washington, DC 20554

Cramming *Unauthorized, Misleading* *Or Deceptive Charges* *Placed on Consumers'* *Telephone Bills*

One of the fastest growing sources of consumer complaints received by the FCC are telephone bills that include charges for services that the consumer did not order, authorize or receive. In many cases, this problem is aggravated by telephone bills that do not clearly state what services were provided or clearly identify the entities providing those services.

"*Cramming*" is a term used to describe the practice of placing unauthorized, misleading, or deceptive charges on consumers' telephone bills. Entities that engage in cramming appear to rely heavily on consumer confusion over telephone bills to mislead consumers into paying for services that were not authorized or received.

This brochure provides information consumers need to know about cramming and summarizes the steps they should take if they have been billed for services that are not clearly described on their telephone bills or for services they did not order, use or authorize.

This brochure also provides tips for consumers on how to save money and protect themselves from cramming and other types of telecommunications fraud.

Cramming Charges *Examples of Cramming Charges*

Cramming can come in many forms and is often hard to detect unless consumers closely review their telephone bills. Here are some examples of possible cramming charges:

- Charges for services that were not requested or authorized by the consumer;
- Charges for services that are explained on the telephone bill in general terms -- such as "service fee," "service charge," "other fees," "voicemail," "mail server," "calling plan," "psychic," and "membership;" and
- Charges that are added to consumers' telephone bills every month without a clear explanation of the services provided -- such as "monthly fee" or "minimum monthly usage fee."

Such charges may be for legitimate services, but only if they have been authorized by the consumer billed for the services.

How Cramming Charges Occur

In addition to providing local telephone service, local telephone companies often bill their customers for services provided by other companies.

Cramming charges can be included with a consumer's local telephone company bill when a long distance telephone company or another type of service provider sends inaccurate billing data -- whether through oversight or intentionally -- to the local telephone company. The local telephone company, in turn, bills the consumer for the calls or services. A local telephone company may also engage in cramming if it bills a customer for a service provided by the local telephone company that was not authorized by the customer.

Cramming also occurs when a local or long distance telephone company or another type of service provider imposes a charge for services authorized by a consumer but does not clearly or accurately describe all of the applicable charges to the consumer when marketing the service.

While cramming charges typically appear on consumers' local telephone bills, cramming charges may also be included with bills issued by long distance telephone companies and companies providing other types of services such as cellular

telephone, digital telephone, beeper and pager services.

Actions the FCC Has Taken to Combat Cramming

The FCC's Truth-in-Billing Proposals

The FCC has proposed guidelines to make telephone bills more consumer-friendly by providing consumers with the information they need to determine what services have been provided, the charges assessed for those services, and which entities provided those services.

This basic information will empower consumers to protect themselves from cramming and other types of telecommunications fraud and to make informed choices when they shop around to find the best deal for the telephone services they want to use.

Our consumer brochure entitled *Truth in Billing for Telephone Bills* explains the FCC's proposed guidelines to make telephone bills more consumer-friendly. You can browse and download a copy of this brochure and other consumer information about telephone-related issues from the FCC's Web Site at:

http://www.fcc.gov/ccb/consumer_news/

You can also obtain a copy of this consumer information by calling the FCC's toll-free 1-888-225-5322 voice number or the toll-free 1-888-835-5322 TTY number.

The text version of the FCC's truth-in-billing proposals is available on the FCC's Web Site at:

http://www.fcc.gov/Bureaus/Common_Carrier/Notices/1998/fcc98232.txt

Other Consumer Protection Actions Taken by the FCC

The FCC recently worked with the local telephone companies and providers of billing and collection services to develop industry best practices guidelines to combat cramming practices on consumers' telephone bills. These guidelines primarily address the relationship between local telephone companies and the service providers for whom they provide billing services.

The anti-cramming best practices guidelines are available on the FCC's Web Site at:

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

How to Protect Yourself and Save Money

Carefully review your telephone bill **every** month.

Treat your telephone service just like any other major consumer purchase. You should review your monthly telephone bills just as closely as you review your monthly credit card and bank statements.

Ask yourself the following questions as you review your telephone bills:

- "Do I recognize the names of all of the companies listed on my bill?"
- "What services were provided by the listed companies?"
- "Does the bill include charges for calls I did not place and services I did not authorize?"
- "Are the rates charged by each company consistent with the rates that the company quoted to me?"

Keep in mind that you may sometimes be billed for a call you placed or a service you used -- but the description listed on your telephone bill for the call or service may be unclear. If you don't know what service was provided for a charge listed on your bill, ask the company that billed the charge to explain the service provided before paying the bill.

The cost of small, incorrect charges for telephone-related services adds up over time. Make sure you know what service was provided for small charges. Crammers often try to go undetected by submitting \$2.00 or \$3.00 charges to many thousands of customers.

Keep a record of the telephone services you have authorized and used -- including calls placed to 900 numbers and other

types of telephone information services. These records can be helpful when billing descriptions are unclear.

Carefully read all forms and promotional materials -- including all of the fine print -- before signing up for telephone services.

Companies compete for your telephone business. Use your buying power wisely and shop around.

If you think that a company's charges are too high or that their services do not meet your needs, contact other companies and try to get a better deal.

Actions You Can Take If You Have Been Crammed

You should take the following actions if cramming charges are listed on your telephone bill:

- Immediately call the company that charged you for calls you did not place or for services you did not authorize or use. Ask the company to explain the charges. Request an adjustment to your bill for incorrect charges.
- Call your local telephone company about cramming charges billed by that company. A customer helpline number for your local telephone company is usually included on the front page of your telephone bill.
- Explain your concerns about the cramming charges to your local telephone company and ask them to explain the procedures for removing incorrect charges from your bill.
- If the companies you contacted will not remove incorrect charges from your telephone bill, you can file a complaint with the proper regulatory agency.

Complaints About Cramming and Other Telephone-Related Services

Complaints About Non-Telephone Services

For cramming charges on your telephone bill for non-telephone services you should file a complaint with the Federal Trade Commission. An example of non-telephone services is "content" services such as psychic hotlines.

You can obtain information about the FTC's regulations and how to file a complaint by writing to the Federal Trade Commission, Public Reference Branch, Drop H240, Washington, D.C. 20580; by calling the FTC's Consumer Response Center at (202)326-3128; or by visiting the FTC's Web Site at: <http://www.ftc.gov>

Complaints About Telephone-Related Services Provided Within Your State

For telephone-related services provided within your state you should contact your state regulatory commission. Your local or state consumer office should be able to provide the telephone number and address for your state regulatory commission. This information may also be listed in the government section of your telephone directory.

You can also obtain the telephone number for your state regulatory commission by visiting the FCC's Web Site at:

http://www.fcc.gov/ccb/consumer_news/state_puc.html

Filing a Complaint with the FCC About Interstate or International Telephone-Related Services and Charges

Complaints about telephone-related issues must be filed with the FCC in writing. You can file a complaint with the FCC by simply sending a typed or legibly printed letter in your own words to:

FCC
Common Carrier Bureau
Consumer Complaints
Mail Stop Code 1600A2
Washington, D.C. 20554

The following information should be included in your complaint letter:

- Your name, company name (where appropriate), address and a daytime telephone number (including the area code).
- A brief description of the complaint; the telephone number(s) involved with the complaint; the date(s) of the incidents involved with the complaint; the names, addresses and telephone numbers for the companies involved with your complaint; the names and telephone numbers of the company employees you spoke with in an effort to resolve the complaint, and the dates you spoke with them; and the action you are requesting, such as a credit or refund for disputed charges.
- Copies of the telephone bill(s) listing the disputed charges and other documents involved with the complaint. The disputed charges should be circled on the copies of the telephone bill(s).

Produced by: The Common Carrier Bureau Enforcement Division January 1999
Form No. CCB-FS013

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Cramming: Mystery Phone Charges

April 1998

"Cramming." No, we're not talking about studying for an exam, although you may want to study your monthly phone bill more closely in the future. This type of cramming refers to unexplained charges on your phone bill for services you never ordered, authorized, received, or used. Sometimes a one-time charge for entertainment services will be crammed onto your phone bill. Other times, monthly recurring charges are crammed onto your phone bill. Cramming of monthly recurring charges falls into two general categories: club memberships, such as psychic clubs, personal clubs, or travel clubs; and telecommunications products or service programs, such as voice mail, paging, and calling cards.

Cramming Schemes

Most of these scams occur through the use of an 800 number. Others are initiated by contests or sweepstakes. They are all deceptive, and you should dispute the charges. Here are some common ways crooks get your phone number and cram charges onto your bill.

- **800 Number Calls.** You call an 800 number advertised as a free date line, psychic line or other adult entertainment service. A recording prompts you to give your name and to say "I want the service," or some similar phrase, to get the advertised free service. You may have no opportunity to speak with an operator or ask questions, but you are automatically enrolled in a club or service program. The phone number from which you call is captured and billed. You often never get the "free" service you called for, or the service you're billed for.
- **Contest Entry Forms.** You fill out a contest entry form, thinking you're entering to win a prize. In fact, some unscrupulous promoter is using the contest to get your phone number, enroll you for a calling card or some similar service, and bill you on your phone bill. The disclosure on the entry form, which is very difficult to comprehend and in very fine print, says that by completing the form, you authorized the service. You may never get the service -- just the bills.
- **Direct Mail Sweepstakes.** You receive a sweepstakes promotion in the mail that tells you to dial an 800 number to enter or claim your prize. When you call, a recording follows an automated script to automatically enroll you in a club or service program. The phone number from which you call is captured and billed. Once again, the disclosure on the sweepstakes mailer is very difficult to comprehend and in very fine print, and you do not get the service -- just the bills.
- **"Instant" Calling Cards.** Someone may use your phone to call an 800 number for an adult entertainment service, and be offered an "instant calling card." The "calling card" isn't an actual card, but is rather an access code based on the phone number from which the call was placed. The card is used to access and bill for the entertainment service. If someone uses your phone to sign up for such a card, your phone number will be billed for all purchases of entertainment made using that card, whether or not they are made from your phone.
- **Dating Service Calls.** You call an 800 number advertised as a way to meet local people for free. You're told your date will call you back, or you're asked to enter a code to be "teleconferenced" with your date. What you're not told is that you'll be charged a hefty fee for your conversation with your date. Charges for these calls show up on your phone bill incorrectly labeled as collect or toll charges from a different city.

- **International Calls.** Some ads for adult entertainment services tell you to call a number starting with 011, 500, or another unfamiliar area code. The ads don't explain that these numbers are for expensive international calls, and that the entertainment provider is making money every minute you stay on the line.
- **"Free Minutes" Deals.** You may see ads promising "free time" for a date line, psychic line, or other adult entertainment service. When you call, you're put on hold but told that you won't be charged for this time. Not always true: Sometimes, the "hold time" is deducted from your free minutes. In fact, you may be billed for some of your "hold time" as well as your "talk time."

Don't Get Crammed

Here are some tips to help you avoid cramming scams.

- Be aware that your local telephone company may bill for services provided by other companies. Your local phone bill may include charges for long distance telephone calls, information or entertainment services accessed through 900 numbers or presubscription agreements, club memberships, and non-basic telecommunications services like voice mail or paging.
- With the right technology, companies can get your phone number when you call them, using a process similar to caller ID. Once they have your number, an unscrupulous company can cram charges onto your phone bill. What's more, since this technology can automatically bill the phone number that is called from, other people using your phone can cause charges to be billed to your phone.
- Carefully read the fine print before you fill out contest forms, especially if they ask for your phone number. Likewise, read the fine print before you place a call in response to a sweepstakes promotion.
- Be cautious about calling unfamiliar 800 numbers. Be especially wary if you're told to enter codes, leave your name, or answer "yes" to prompts. Unscrupulous entertainment providers may use this ruse to send you a bill.
- 900 numbers cost money, even if you're calling to claim a "free" prize. All 900 numbers that cost more than \$2 must give you a brief introductory message about the service, the service provider, and the cost of the call. You have three seconds after the message ends to hang up without being charged.
- Consider a 900 number block; it stops calls from going through to 900 number services. Blocks also are available for international, long distance, and local toll calls. Call your local phone company for details.
- Check your phone bill every month for unfamiliar charges. Sometimes, a call placed to a toll-free number may be fraudulently billed as a 900 number, collect call, or international call. Also, calls to information and entertainment providers in foreign countries may not be described as such. They may be listed as ordinary international toll calls, or calling card calls.
- Examine your phone bill for recurring monthly charges. These charges typically appear as "Miscellaneous Charges and Credits." They may be so small, or described in such general terms, that they're easy to overlook or to confuse with valid services you may have ordered from another provider. Watch for fees described as "Min. Use Fee," "Activation," "Member Fee," "Voice Mail," or some similar phrase. If you find an error on your bill, follow the instructions on your statement. You will be told who to call or write to dispute the charge. Follow up any phone conversations with a letter, sent by certified mail, return receipt

requested. That's your proof that the company received your letter. Keep a copy for your files.

Where to Complain

First try to resolve the problem by contacting the telephone company, information provider, or billing agent whose toll-free number is listed on your phone bill. If you call, follow up with a letter.

You should also consider contacting your state Attorney General's office and the Federal Trade Commission. Most Attorney Generals' offices have divisions that deal primarily with consumer protection issues. Check the government section of your phone book or contact your local or state consumer office for the phone number and address of your state Attorney General's office. You can also link to the websites of the Attorney Generals' offices of many states from the [National Association of Attorneys General website](#).

For information about cramming or to file a [complaint](#), call the Federal Trade Commission's Cramming Information Line at (202) 326-3134 or write to: Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580. While the FTC cannot intervene in individual disputes, complaints about cramming help the FTC in its law enforcement initiatives. Your letter should include:

- Your name, address, and a daytime telephone number.
- A brief description of the complaint.
- The telephone number(s) involved with your complaint.
- The names and telephone numbers of the companies involved with the complaint.
- Copies of correspondence with the companies, and bills including charges for calls to an information or entertainment service or for monthly recurring fees. Please circle the disputed charges.

For More Information

For a free copy of [Best Sellers](#), a complete list for FTC publications, contact:

Consumer Response Center

[Federal Trade Commission](#)

Washington, D.C. 20580

(202) FTC-HELP (382-4357); TDD: (202) 326-2502



I've Been Crammed!

Cramming is the newest phone scam and it costs consumers money.

What is "Cramming?"

Cramming (kram'ing) v. – the act of having charges added to your residential telephone bill for services that you did not order.

Are there charges on your telephone bill for services you didn't request and aren't using – services such as paging, voice mail, sports updates, psychic hotlines or mysterious memberships? If there are, you may be a victim of cramming: being charged for services you did not order.

Cramming is one of the latest scams that, like slamming (changing your long distance carrier without your permission), is designed to take advantage of unsuspecting telephone consumers.

Cramming ranks among the top five complaints received by the Federal Communications Commission (FCC).

How It Happens

Unauthorized charges on your telephone bill are always an unpleasant surprise. Consumers have reported cramming charges from \$3 to several hundred dollars. So why are these charges on your bill?

Local telephone companies serve as billing agents for many long distance and information service providers. Invalid or unclear charges can occur when a long distance telephone company or an information services provider sends inaccurate billing data – whether through oversight or intentionally – to the local telephone company. The local telephone company, in turn, bills consumers for the calls or services.

Unclear charges also occur when a long distance telephone company or an information services provider legitimately imposes a charge but either insufficiently or improperly describes the service for which the consumer is being billed.

How to Avoid It

1. Examine your monthly telephone bill and make sure you understand every charge. Look for unfamiliar company names, calls you didn't make, and services you didn't authorize. If something isn't clear or there's a company name you haven't seen before, call your local telephone company and ask for an explanation.
2. Keep a note pad by the telephone and jot down each phone service (e.g., call waiting, voice mail, etc.) you authorize, as well as any long distance calls and calls to informational or "900" services.
3. Be careful of entering "activation codes" or answering "yes" to questions that may be intended to get you to unintentionally authorize services you don't want.
4. Read the fine print before completing contest applications, sweepstakes tickets and coupon offers.

5. Be sure that you know who's using your telephone at all times and request "blocking" services when appropriate. Having "900" numbers blocked from your telephone line will help keep mysterious charges off your bill.

Where to Get Help

If you believe that bogus charges are being "crammed" onto your telephone bill, contact your local telephone company and ask to have the charges removed. You may also contact:

Public Utilities Commission of Ohio

180 E. Broad St.
Columbus, OH 43215-7826

1-800-686-7826
(or 1-800-686-1570 [TTY/TDD])

8 a.m. to 5 p.m. Monday through Friday

Ohio Consumers' Counsel

77 S. High St., 15th Floor
Columbus, OH 43266-0550

1-877-742-5622
(voice and TTY/TDD)

8:30 a.m. to 5:30 p.m. Monday through Friday

Ohio Attorney General

Consumer Protection Section, 25th Floor
30 E. Broad St.
Columbus, OH 43266-4320

1-800-282-0515

8:00 a.m. to 4:45 p.m. Monday through Friday

Remember that under the PUCO's Local Telephone Disconnect Policy, your local telephone service cannot be disconnected if you fail to pay any disputed toll charges (long distance), including charges for calls to "900" and other pay-per-call numbers and for other telecommunication services not regulated by the PUCO. You may want to validate the dispute by raising the matter in a letter to your local phone company.

[PUCO Consumer Education Home Page](#)

PSC Consumer Guide: Cramming



- What Is Cramming?
- How Does Cramming Occur?
- How Do I Know I've Been Crammed?
- How Can Cramming Charges Be Placed on Local Telephone Bills?
- What Can I Do If I Think I've Been Crammed?
- Cramming Core Guidelines

What Is CRAMMING?

CRAMMING is a practice where a company places unauthorized charges for telephone and non-telephone related services on your local telephone bill. Some of these charges may appear on your telephone bill in terms that do not clearly state what service was provided, such as "enhanced services," "access," "activation," or "minimum usage fees."

How Does CRAMMING Occur?

Some of the ways consumers become CRAMMING victims are through:

- sweepstakes or contest entry forms;
- advertisements for information or entertainment services that are available through 900 numbers; and
- free offers that trigger an automatic sign-up for a service such as "voice mail," along with a monthly service fee.

CRAMMING charges are often disguised on local telephone bills as every day phone services and explained in general terms such as: activation, membership, and minimum usage fees; enhanced services; equipment deposits; calling plans; travel service and discount packages; and adult entertainment chatlines.

How Do I Know I've Been CRAMMED?

You usually will not realize you have been crammed until the name of a company that you do not recognize, charging for services that you did not order, appears on your local telephone bill.

How Can CRAMMING Charges Be Placed on Local Telephone Bills?

In the past, your local telephone company was required to provide billing and collection services for an approved fee to other telephone companies. Now that telephone billing and collection services are competitive, your local telephone company can offer its billing and collection services to companies on a non-discriminatory basis, including businesses that sell products or services.

Most of the businesses that use local telephone company billing and collection services are "billing warehouses." Billing warehouses offer billing and/or customer complaint handling services to numerous other individual companies. These "billing warehouses" then bundle the billing information and contract with local telephone companies to bill and collect from the local telephone companies' customers on behalf of the businesses.

The customer charges submitted by a billing warehouse on behalf of a client appear on a separate page of your local telephone company's bill. This separate page states the name of the billing warehouse and the number to call for billing inquiries. The name of the company that actively "provided" the service should also appear on the bill. A billing inquiry number will not be listed for the company that is

providing the service or products, if it has also contracted with the billing warehouse to handle customer services in addition to billing services.

This "multi-layered" billing process frequently causes confusion and makes it difficult to recognize if the charges appearing on your local telephone company's bill are legitimate or not. Bell Atlantic and other local telephone companies will remove unauthorized charges from customers' bills upon request and have started to discontinue billing services for any company that has been found guilty of cramming.

What Can I Do If I Think I've Been CRAMMED?

You should...

- **Review** your monthly telephone bill carefully as you would any other bill (i.e., a credit card bill).
- **Call** the company shown on your telephone bill that provided any charges that are questionable or in dispute.
- **Ask** the company providing the charges, or the billing warehouse, to explain the charges.
- **Request** that a billing adjustment be issued for any incorrect charges. Your local and long distance services will not be terminated due to non-payment of these charges. However, you need to approach the same provider or billing warehouse to resolve the charges to avoid independent collection attempts.
- **Call** your local telephone company and request the removal of incorrect charges from your bill if the company responsible for the charges or the billing warehouse will not remove them.
- **File** a complaint with the proper regulatory agency listed below.

For calls or telephone services provided within New York State, contact:

New York State Public Service Commission
Office of Consumer Services
Three Empire State Plaza
Albany, NY 12223-1350
Toll-free HELPLINE: 1-800-342-3377
Monday through Friday from 8:30 a.m. to 4 p.m.
Internet: <http://www.dps.state.ny.us>

For calls and telephone services provided outside of New York State:

Federal Communications Commission
Common Carrier Bureau
Consumer Protection Branch
Mail Stop 1600A2
Washington, D.C. 20554
1-888-225-5322
Internet: <http://www.fcc.gov/ccb/>

For non-telephone service charges to your telephone bill, such as psychic hotlines:

Attorney General's Office
New York State Department of Law
120 Broadway
New York, NY 10271
1-800-771-7755
Internet: <http://www.oag.state.ny.us>

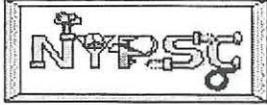
OR

Federal Trade Commission
Public Reference Branch

Drop H240
Washington, D.C. 20580
202-326-3128

This page (<http://www.dps.state.ny.us/cramming.htm>)
was last modified: March 11, 1999

Comments or questions regarding this service? WEB@dps.state.ny.us



PSC Home Page



CRAMMING

June 5, 1998

Cramming is the term used to refer to the practice of placing unauthorized charges on consumers' local telephone bills.

In addition to providing local telephone service, your local telephone company may bill you for services provided by other companies, such as long distance charges or "information services" accessed through 900 numbers (psychic hotlines, for example). Consolidated billing of one's total telecommunications services is a convenience provided by local companies. Recently, however, consumers have been noticing charges that appear on their bills that do not clearly state what service was provided. And, in many cases, consumers claim they are being billed for services they did not order. Examples include:

- Charges for calls that were not made by the consumer;
- Charges for calls that were placed to toll-free numbers;
- Charges for services that are explained only in general terms, such as "voicemail," or "calling plan," or "membership";
- Charges for "800 number service";
- Charges identified as "monthly fee" that appear on a monthly basis.

Local telephone companies serve as billing agents for many long distance and information service providers. Invalid or unclear charges can occur when a long distance telephone company or an information services provider sends inaccurate billing data -- whether through oversight or intentionally -- to the local telephone company. The local telephone company, in turn, bills consumers for the calls or services. Unclear charges also occur when a long distance telephone company or an information services provider legitimately imposes a charge but either insufficiently or improperly describes the service for which the consumer is being billed.

What is being done to protect consumers against these types of billing problems?

Recently, the Federal Communications Commission (FCC) began an inquiry into the causes behind invalid or unclear charges on bills rendered by local telephone companies on behalf of other companies. The Commission is also working jointly with the Federal Trade Commission (FTC) and other regulatory agencies that may have jurisdiction over companies that are engaged in cramming. In April and June of 1997, the FCC met with industry officials to address the growing problem of cramming, and is considering three separate petitions for declaratory rulings or rules on various issues associated with charges by other companies on local telephone bills.

What can I do to protect myself?

- Allow others to use your telephone only for calls and services you authorize.
- Carefully read all forms and promotional materials -- including the fine print before signing up for telecommunications services.
- Keep a record of the telephone services you have authorized and used -- including calls placed to 900 numbers and other types of information services. These records can be helpful when billing descriptions are unclear.
- Carefully review your telephone bill every month. Look for company names you do not recognize, charges for calls you did not make, and charges for services you did not authorize.
- Immediately call the company that charged you for calls you did not make or services you did not authorize. Ask the company to explain the charges and request a billing adjustment for incorrect charges. The name of the company and the telephone number to call about billing questions should be included with your local telephone bill. This information is often at the top of the pages listing the charges for each company.

What do I do if the company refuses to remove the charges?

File a complaint with the Washington Utilities and Transportation Commission (WUTC) by calling 1-800-562-6150. You may also submit a complaint, electronically, by visiting the "Consumer Info" section of the WUTC's website at <http://www.wutc.wa.gov>.

PO Box 47250, Olympia, WA 98504-7250
(360) 664-1160

FAX (360) 586-1150 ♦ TTY (360) 586-8203

WEB: <http://www.wutc.wa.gov/>

To request this document in alternate formats,
please contact the Commission at (360) 664-
1133.

Printed on recycled paper.