BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

| Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities | Rulemaking 00-02-04<br>(Filed February 3, 2000) |
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**COMMENTS OF THE UTILITY CONSUMERS' ACTION NETWORK
REGARDING PROPOSED CRAMMING REPORTING REQUIREMENTS**


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## Introduction

Cramming remains a persistent problem consumers face across the telecommunications industry. UCAN receives complaints regularly from consumers claiming that charges on their phone bill are not authorized, deceptive, or misleading. Not surprisingly, where there have been no reporting requirements and the least oversight, in the wireless industry, there is the most acute problem. The types of charges crammed range from third party services such as ringtone, text message, and multimedia charges on wireless phones, to international roaming fees, to many other variations of taxes, fees, and surcharges. The universe of charges that may be crammed on a consumer's bill is only increasing due to technological advances.

Cramming is a child of these technological advances and deregulation. The Commission's request for comments regarding cramming reporting requirements cited the Consumer Protection Initiative proceedings for the proposition that the "key to protecting consumers against unscrupulous practices by carriers is enforcement." UCAN agrees that enforcement is what is needed most in response to persistent cramming complaints. Enforcement, however, is where the largest void exists.

A thorough reporting requirement could be a significant step towards filling the current enforcement void. On the contrary, a weak reporting requirement will simply allow carriers the opportunity for manipulation, minimizing the efficacy of the information the Commission receives and any enforcement and oversight efforts reliant on that information.

The Commission states that the purpose of enacting the cramming rules "was to clarify current law and to emphasize that it is the billing telephone company's

responsibility to resolve cramming complaints."[1] As the Commission says, it is the telephone company's responsibility to resolve cramming complaints and to police their bills. That said, it is then the Commission's responsibility to ensure both resolution of cramming complaints and policing are actually occurring. UCAN's experience suggests an urgent need for oversight and enforcement of both areas. This cannot occur without a thorough reporting requirement.

UCAN is encouraged by the potential to adopt a reporting requirement that moves us towards a consumer protection system that prevents excesses in cramming and provides consistent monitoring, and away from a system that reacts only when the problems have become so pervasive that they cannot be ignored. UCAN recommends that any claims by carriers that certain reporting or record keeping options are unduly burdensome be heavily scrutinized and require a substantial level of proof.

**Recommendations regarding key terms**

**Definition of cramming**

UCAN supports the adoption of the FCC's definition of cramming. However, it is UCAN's position that the Public Utilities Commission should clarify that any service or product placed on a subscriber's telephone bill has an inherent charge regardless of the initial financial cost to the subscriber. It has been UCAN's experience that telephone companies provide subscribers with services at no charge or a charge of $0.00, without the authorization of the subscriber. These services, while listed at no charge, do have a charge associated with use even if the subscriber is unaware that the service listed is in use or will result in charges to the subscriber.

[1] Assigned Commissioner's Ruling Requesting Comment and Briefing on Cramming Reporting Requirements, Pg. 4.

By way of example, UCAN has brought an action against AT&T Mobility currently before the CPUC where an AT&T Mobility subscriber received charges for incoming and outgoing international roaming charges.[2] The subscriber claims to have been unaware that international roaming was a service available to the subscriber and as a result when the subscriber traveled with the phone and the phone was left on, the subscriber incurred charges for unanswered incoming calls to the subscriber's phone. The subscriber never agreed to the service provided at $0.00 and as a result later incurred charges for services the subscriber was unaware could be used or would result in charges. In fact, the charges due to International Roaming service being enabled amounted to over $28,000, and the subscriber claims they never used or had knowledge of the International Roaming service placed on their bill by AT&T.[3] But for the International Roaming service, the customer would not have incurred these cramming charges. UCAN's suggested changes coincide with the Staff Report statement "that 'unauthorized charges' include the unauthorized addition of services or features to a consumer's telephone service that a consumer never ordered, authorized, or received."[4]

**Definition of Complaint**

UCAN suggests that the Public Utilities Commission modify the definition of complaint to include the misleading or deceptive charges as included within the definition of cramming. The definition should read as follows: "any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized, misleading, or deceptive and that was billed either directly or indirectly, through a telephone company." Incorporating these changes creates a

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[2] c. 07-08-033
[3] Id.
[4] Staff Report 6-7

necessary consistency between the definition of cramming and a subsequent cramming complaint. UCAN also suggests that its definition of charge, to include services of $0.00 as described in UCAN's recommendation for the definition of Cramming also be incorporated in the definition of Complaint.

**Definition of Resolved Complaint**

UCAN does not support the adoption of the definition of Resolved Complaint as currently worded. The term Resolved Complaint should anticipate that the subscriber is satisfied with the outcome. Therefore, the definition of Resolved Complaint should include a requirement of satisfaction on the part of the subscriber. Otherwise, the complaint should be considered pending. The proposed definition does not require any action by the company to verify the charges. The company could falsely assume it has resolved a complaint by informing a customer charges are legitimate without actually reviewing or verifying any information. A more appropriate definition of "Resolved Complaint" would be: "Any complaint in which the subscriber has informed the billing company explicitly that the subscriber does not contest the determination of the billing company as to whether the charges or services were unauthorized, deceptive, or misleading and will not be pursuing the issue any further with the company or with the CPUC."

**Definition of Authorization**

UCAN does not agree with the Commission's assertion that the quoted section of 2890(d)(2)(D) provides a definition of authorization. The statutory section is actually determining what entity has the burden of proving that a charge for a product or service was authorized. Under section 2890(d)(2)(D), if a charge is disputed there is a rebuttable

presumption that the charge is authorized, placing the burden on the carrier to verify authorization for the service or product. In the final report, the Staff recommended the definition for Authorization as recommended by the Joint Wireless Carriers. However, the Joint Wireless Carriers did not recommend merely the adoption of section §2890(d)(2)(D) as the definition of authorization rather it stated "In short, authorization is an affirmative act taken by the customer for the purpose of obtaining the product or service."[5] Therefore UCAN recommends that the Commission adopt two separate definitions for reporting purposes; a definition of authorization, and a definition for unauthorized charge. The Commission should define authorization as "an affirmative act taken by the customer for the purpose of obtaining the product or service." The Commission should define unauthorized charges as "any charge on a subscriber's telephone bill that the telephone company has not verified as authorized." Adopting these two definitions as opposed to an ambiguous definition of authorization would help focus what information is required to be reported.

**Applicability of a cramming reporting requirement**

UCAN agrees with the concept of holding those in the billing "food chain" accountable. This includes telephone companies, service providers, billing agents, and other third parties as suggested in the CPI. For clarity, UCAN believes that billing agents should include clearinghouses, aggregators, as well as local and international roaming partners. If an entity is responsible for placing a charge on a consumer's bill, it should be subject to Commission jurisdiction and cramming laws. This concept exists in other areas of the law, such as product liability, where even if a manufacturer produces a flawed product, distributors and retailers of the product still carry responsibility. The

[5] Staff Report Appendix B,

significant benefit to companies who place charges on consumers' bills should come with the responsibility to meet the requirements of the Commission and California Public Utilities Code.

UCAN agrees with the CPI's statement that "the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction."[6] In addition, the Commission should use its authority to regulate the "food chain" by enjoining telecommunications companies from using certain third parties when a pattern of cramming has been established.

Reporting by the entire "food chain" however, should not be used to mask the nature or frequency of cramming complaints. For example, in UCAN's case against Cingular (now AT&T Mobility) regarding ringtone and other third party services, the victim, Diane Cervantes, repeatedly contacted and complained to both the third party service provider and Cingular. She was told that neither company could assist her. It is not clear that any additional burden from duplication of records exists, and the additional potential for identifying cramming issues outweighs potential additional costs. Further, it must be recognized that some third party providers on wireless phone bills are small sized operations, sometimes based overseas, sometimes in existence only temporarily. The Commission should reemphasize that while others in the "food chain" can be held accountable, telephone companies' requirements regarding reporting and handling of cramming complaints persist.

**Frequency of reporting**

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[6] D.06-03-013, p. 76.

The Commission's proposed schedule of reports being due from the previous month on the last day of the current month makes sense. The basic data and information requested by the Commission should not require more than 30 days for companies to produce, particularly with drastic limits such as those requiring reporting of only complaints over 30 days. It should also take no more than 30 days to produce data from more thorough reporting requirements, such as those UCAN supports requiring that carriers provide all cramming complaints in a given month as well more detailed information regarding the nature of cramming complaints. That said, if a more thorough reporting requirement is adopted, a longer time frame for reporting, such as 90 days, would be an acceptable trade-off, if necessary.

**Which complaints should be reported?**

The requirement that only complaints unresolved after 30 days should be reported, and the examples offered of reportable cramming complaints, appear to gut many of the objectives of this proceeding. The result would be insufficient data to pursue cramming violators in accordance with the statutory intention of Section 2889.9. As the Commission notes, the current complaint reporting requirements for local exchange carriers are not confined to those complaints not resolved in 30 days. Administrative burden is cited as the reason for confining reporting, but few details have been provided as to why a requirement that is already in place for LECs is suddenly overly burdensome.

The carriers have repeatedly stated most complaints do not last over 30 days. Thus most complaints are immediately eliminated from being reported. Indeed, General Order 168 states that carriers should, within 30 days, either 1) verify the complaint or 2)

credit the customer[7]. The Commission cites to and proposes to accept this definition of a resolved complaint. Therefore, any complaints reported to the Commission under the proposed reporting requirements would be in violation of this requirement, as they should have been resolved in 30 days. This is another disincentive to reporting cramming, as each reported complaint is to some extent an admission that General Order 168 (C)(d) and Public Utilities Code 2890(e) have been violated. The carriers should have the responsibility to show in detail why the vast majority of complaints should be eliminated wholesale from the reporting requirements. The confinement of reporting to complaints not resolved in 30 days is such a significant reduction in information available to the Commission to enforce cramming laws that the standard of proof must be very high.

The second rationale for requiring reporting only complaints not resolved in 30 days is to "provide carriers with sufficient time and an incentive to resolve customer complaints quickly[8]." The reality of cramming disputes is often that more than one customer at a time will experience issues with crammed charges. For instance, in a recent adjudicatory case against MCI, UCAN revealed that 1,890 Californians had experienced unauthorized charges.[9] Not all of these customers realized that they were being charged a small extra fee every month. In fact, only a fraction of customers contacted the company about the charges. Mr. Duclo called the company 9 times starting in June 2006 over a period of 5 months, and was repeatedly credited. However, the underlying cramming issues were not solved systematically, and all affected customers refunded, until formal complaints were filed. Since Mr. Duclo was eventually credited

[7] General Order 168 Part 4 (C)(d)

[8] Assigned Commissioner's Ruling Requesting Comment and Briefing on Cramming Reporting Requirements, Pg. 15.

[9] D. 08-03-015, p.3

each time he requested it, his case would never have been reported under the proposed reporting requirements, and the thousands of other affected customers would have remained hidden.

In addition to Mr. Duclo's example, UCAN's current case against AT&T regarding International Roaming involves two customers, Ms. Abera and Ms. Yeshaw, whose complaints would have never been reported to the Commission under the proposed rules. In Ms. Abera's case, she called AT&T and claimed that the $28,000 in International Roaming and related charges listed on her bill were unauthorized. AT&T apparently conducted an investigation of these charges and determined their propriety all in the course of one phone call, despite Ms. Abera's insistence that none of the charges were authorized. Ms. Abera's complaint would then be considered verified within 30 days, and it would have never been reported to the Commission. Another victim of crammed International Roaming charges, Aster Yeshaw, called AT&T multiple times in February and March to dispute International Roaming and related charges that eventually added up to over $8,000. While AT&T claims it has record of Ms. Yeshaw calling in March, when she faced over $8,000 in disputed cramming charges, it claims no complaint was made until August 2008. Therefore, because Ms. Yeshaw's dispute of her charges in March was not considered a complaint, this cramming dispute would not be reported.

Mr. Duclo, Ms. Abera, and Ms. Yeshaw's experiences are common. Sometimes, as in Mr. Duclo's case, carriers may be willing to provide credits to an individual who complains of cramming, but no systematic resolution or refund to the entire class of affected customers occurs. Other times, complaints are improperly treated as resolved, or simply not categorized as complaints, as in Ms. Abera's and Ms. Yeshaw's cases.

Confining reporting to complaints not active after 30 days will simply allow carriers to hide the complaints, and actually works against the goal of reducing cramming. Even if all complaints are requested, there is still plenty of incentive to resolve a dispute within 30 days, because it is required by General Order 168 Part 4 (C)(d).[10]

**Defining cramming complaints**

The Commission also cites the Staff report on the reporting workshop for examples of what would not be considered a cramming complaint for reporting purposes[11]. Some of the examples show a serious lack of understanding regarding the reality of consumer cramming complaints, and would allow for wholesale manipulation. These include 1) "Complaints about errors or billing mistakes"; 2) "Complaints about government-mandated charges or taxes"; 3) "Complaints about charges incurred by another authorized user of the phone"; 4) "Charges incurred through a stolen or lost phone." These examples should not be used as examples of what is not cramming for any purposes, including reporting.

The "Complaints about errors or billing mistakes" exception succumbs to a recurring flaw by letting the telephone company control whether a complaint is about an error or billing mistake. In addition, the exception unwittingly creates an intent standard not provided for in cramming laws or regulation, where a complaint will not be reported as cramming if the company can simply claim the charge was an error or mistake, rather

[10] General Order 168 Part 4 (C)(d). "d) Complaint Resolution: If a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user's authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber's bill."

[11] Assigned Commissioner's Ruling Requesting Comment and Briefing on Cramming Reporting Requirements, Pg. 8-9.

than intentional. No such intent standard exists in the law. Complaints that involve unauthorized charges should be reported as cramming complaints for the CPUC's review.

UCAN interacts directly with telephone companies and third parties in the dispute of cramming charges. The reality is that very often, and even in instances where telephone companies do concede that charges are unauthorized, the companies immediately resort to calling a crammed charge the result of an error or billing mistake. In Mr. Duclo's example above, MCI's answer to UCAN's formal complaint admitted that the charges were unauthorized, but that they were simply the result of a technological error in its billing system resulting in a billing mistake[12]. The fact that the cramming was intentional or the result of an error or billing mistake is immaterial, because over 1800 customers were effected in the amount of tens of thousands of dollars for an unauthorized charge.

Mr. Duclo's case is also illustrative in showing the failure of the second example of what would not constitute cramming for reporting purposes, those "complaints about government-mandated charges or taxes." The unauthorized charge Mr. Duclo faced, a "Billing statement fee," created numerous state and federal taxes and fees on his bill. Credits achieved in litigation included such unauthorized taxes and fees. If a telephone company, billing agent, or third party, places unauthorized, misleading, or deceptive charges of any sort, including taxes, fees, or surcharges, they should be considered cramming. Any argument that complaints about charges masquerading as government-mandated taxes and fees will be distinguished from other complaints about government-mandated charges or taxes puts too much faith in the "customer service" training of telephone companies. Simply reporting claims of unauthorized, misleading, and

[12] MCI's Answer in c. 06-10-023, http://www.cpuc.ca.gov/EFILE/ANS/62499.pdf

deceptive charges will allow the CPUC to decide the propriety of complaints, rather than letting the phone companies play games with loose definitions.

Eliminating "[c]omplaints about charges incurred by another authorized user of the phone" from being considered cramming for reporting purposes again ignores the actual cramming scenarios consumers face on a day to day basis. In many cases cramming charges are unauthorized, deceptive, or misleading to an authorized user other than the subscriber. This is still cramming. The proposed language suggests that even if the subscriber reported a charge incurred on an authorized user's phone as unauthorized, deceptive, or misleading, the complaint would not be reported. Complaints regarding the charges incurred on authorized phones are very common, and suggesting they are not cramming, even for reporting purposes, is an absurd interpretation, creating a huge loophole in our cramming laws.

For example, in Ms. Cervantes example above, the third party charges she incurred for various ringtone and data services occurred on her daughter's phone. In Ms. Abera's example, she became liable for over $28,000 of International Roaming charges because AT&T chose to unilaterally enable International Roaming on a secondary phone she authorized her brother to use. Ms. Cervantes and Ms. Abera's cramming complaints would likely not be reported under this language.

Indeed, the exploitation of secondary phones on family plans seems to be a common theme in cramming, particularly with children who face constant advertisements for various third party services. Subscribers who are held accountable for the billing of these charges deserve the right to contest whether a charge is authorized, and reporting

these complaints is as critical to the Commission's oversight and enforcement efforts as any other complaints.

Finally, as to excluding complaints from reporting regarding "[c]harges incurred through a stolen or lost phone," the recent Attorney General's settlement with AT&T takes a very different position from exclusion of these types of complaints from cramming, striking a reasonable balance that allows consumers to avoid liability for numerous charges they never authorized. The settlement specifically addresses AT&T's responsibility to abide by General Order 168 (C)(d) regarding handling of cramming complaints. UCAN regularly receives complaints from individuals who are being held accountable for hundreds or thousands of dollars from the theft or loss of a phone. Phone companies will sometimes offer a fraction of the outstanding balance as a credit, and hold the customer liable for the remaining unauthorized charges. The Commission should receive reports of these types of cramming complaints to inform its oversight and enforcement efforts.

**Cramming complaint report data from California customers**

It is unclear why reporting cramming complaint data from California customers only would be unduly burdensome for carriers. Any claims by carriers that certain reporting requirement options are unduly burdensome should require a substantial level of proof and be heavily scrutinized. If a larger set of national or regional data is provided, it must be in a format that the Commission will be able to analyze it efficiently and fully. The Commission should ensure that providing more data does not lead to unnecessary obfuscation of the realities of cramming. The carriers will bear the burden to explain why California specific data cannot be provided.

**What reporting requirement should the Commission adopt?**

The concerns associated with adopting a reporting requirement for only complaints unresolved after 30 days, or limiting reported cramming complaints based on poor examples of complaints that would not be considered cramming(such as complaints regarding billing errors and government taxes and fees), are discussed above in the section "What should be reported." Confining reports to complaints unresolved after 30 days, or according to the examples provided, would leave the Commission in the dark regarding cramming.

Ideally the Commission would adopt a thorough reporting requirement that included all types of billing complaints. At the very least, information regarding all cramming complaints is required under the Public Utilities Code 2889.9(d)[13]. The statute requires that companies, billing agents, and other third parties, for "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…" This requirement does not limit reported complaints to those unresolved in 30 days, and such a limitation violates the mandate in the statute by narrowing the requirements set by the legislature. There is no authority for narrowing of legislative intent in this statute

On the contrary, the Commission's pursuit of reporting regarding all cramming complaints, including complaints regarding billing telephone companies themselves, is an

[13] California Public Utilities Code 2889.9(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."

expansion of the Legislature's mandate to report "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." However, unlike the proposed narrowing of the statute, the Commission's choice to expand this language has authority in 2889.9(i), which allows the Commission to "adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article."[14]

To supplement its reporting and record retention requirements(discussed below), the Commission should require the information be available for auditing and should periodically audit the information to ensure the validity of the records retained. By auditing the records the Commission would have a more complete understanding of cramming as well as the methods and tactics employed by the companies to investigate cramming complaints. In addition, the Commission could confirm that the companies were not only recording their complaints accurately, but also that the companies were resolving their cramming complaints as required by §2890(e). If only complaints that are unresolved after 30 days are required to be reported, a record auditing procedure would become critical to the Commission's enforcement efforts.

**What are the costs and benefits of adopting various requirements?**

UCAN looks forward to offering reply comments to carriers' cost and benefit analysis of various proposals, particularly reporting of all cramming complaints. The carriers should meet a very high standard to show why reporting of all cramming

[14] California Public Utilities Code Section 2889(i)

complaints is so onerous that the Commission should only receive a tiny fraction of total cramming complaints.

The Commission has chosen to take a path of deregulation, and takes this position based on various technological progress made with regard to telecommunications. Thorough reporting requirements allow the Commission to understand how the changes in the telecommunications industry are affecting consumers. Reporting requirements allow the Commission to take the temperature of the industry and prevent problems from becoming pervasive. Hollow reporting requirements will allow problems to linger and get out of hand.

**Whether it would be appropriate to adopt a cramming reporting requirement triggered by a metric**

Proposals for a cramming reporting requirement based on cramming complaints as a percentage of total subscribers, or total refunds as a percentage of total revenues, are not based in reality. The problems with carriers identifying and labeling a complaint as "cramming" have already been discussed, along with the concept that only a fraction of those affected ever even contact the carrier. A percentage trigger based on refunds would be the more disastrous of the two proposals, allowing carriers to hide cramming complaints. The clearest illustration of the problems with this is the wireless industry, where carriers typically issue courtesy credits, which hides the actual reasons for refunds, and lets the carriers admit no fault. Both proposals would be subject to significant manipulation. The Commission should not concern itself with how to establish a baseline for these metrics, because both proposals for reporting based on a metric of complaints or refunds should be avoided in favor of reporting of all complaints.

**The extent to which billing telephone companies have an obligation to provide reports to the Commission concerning their investigations or information about "bad actor" third-party billing agents or third-party vendors**

A "bad actor" reporting requirement is generally a good thing as it provides the Commission more information with which to conduct oversight and enforcement. However, if a thorough enough reporting requirement was adopted, then the Commission could identify problem areas itself, rather than relying on carriers. The problem with this proposal, and current interpretation of cramming laws and regulations, is that the carriers have too much authority to control the regulatory framework in which they operate. The carriers here would let the Commission know if they have sanctioned a third party, or terminated business relations with a third party. Instead, actual regulation would involve the Commission having notice of complaints about a billing agent or third party, and taking action itself to address the cramming complaints, or terminate billing relationships in the case of particularly egregious acts of cramming by a billing agent or third party. A "bad actor" proposal seems to assume that the reports the Commission is getting are insufficient for oversight and enforcement.

**Regarding a monthly report on cramming which includes information for all cramming complaints.**

Again, a monthly cramming report which covers all cramming complaints in that period is preferable to one which limits reports to all unresolved complaints after 30 days. Indeed, as argued above, the statute requires such a report regarding all cramming complaints. There is a question, however, whether the information requested in this proposal, truly meets the requirements of the statute. While information regarding total

complaints and names of companies involved is reported, the critical information in an individual complaint, that is, what the customer's specific dispute was, is not included. A single third party can offer many services that can be crammed on a customer's bill. Therefore providing the name of the company in reports will often tell the Commission little about specific problems or issues a customer faces. If the specific dispute information is to be recorded, it is unclear what makes reporting it that much more burdensome. Carriers should be required to explain not only 1) why data related to all complaints is overly burdensome to produce, but also 2) why specific complaint data regarding the customer's specific cramming complaint is too burdensome to produce in reports(despite recordation of the information).

**Three-Year record retention requirement**

UCAN supports the Commission recommendation to adopt a record retention requirement. UCAN recommends that the Commission actually require the provided records to be retained. Throughout its recommendation the Commission includes the language "to the extent they exist," giving the reporting organizations an opportunity to merely destroy the records, or not keep them in the first place and thus have nothing to produce. The information requested,

1. The subscriber's name;
2. The subscriber telephone number and the unique subscriber identifier, if any;
3. The name of the service provider responsible for the alleged unauthorized charge;
4. The name of the billing agent or billing agents, if any;

5. The amount of the alleged unauthorized charge and the date the charge was incurred and billed;
6. A description of the product or service billed;
7. The disposition of the dispute; and
8. A record of the original subscriber authorization for the charge, if any,

is all information that the reporting organization should have obtained while investigating the subscriber's complaint to determine whether the charge was authorized. Such information, should merely be recorded in the customer service record, which should have been created while the reporting organization was investigating the cramming complaint. The Commission should therefore mandate the retention of this information as it does not place any additional burden upon the reporting organization, as long as the organization is properly investigating subscriber complaints. At most, the organization would incur a cost associated with storing the information retained. The benefits of such records being available would far exceed the minimal costs to the company. The retained records would be an invaluable source of information for determining whether the companies were complying with the requirements of the cramming statues. In addition, the retained records would provide a valuable look as to which companies were the worst crammers, and which companies were rarely, if ever, accused of cramming. Such information could be used to help determine when an the Commission needs to institute an investigation against a company, or even what additional parties if any should be included in an adjudicatory action to resolve a cramming dispute. UCAN suggests that to add even more value to the retained records, the retained information should include:

9. The date the subscriber initiated the complaint;

10. The date the company resolved the complaint, if any

This information should also be retained because it is also information that would be retained by a company conducting a proper cramming investigation, the companies would not incur any additional costs, beyond costs for space to retain the information, and for all the same benefits listed above.

Regarding the recording of

1. The total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider.; and
2. The total number of telephone numbers billed by the billing telephone company or billing agents for each service provider.

While the Commission has the authority to request such information, UCAN believes that obtaining reporting of all cramming complaints, including specific data on individual complaints, should be the Commission's focus in this proceeding. The first requirement should not become basis for inaction, due to reports from companies that show refunds as a tiny percentage of total revenues. If this requirement is made, UCAN recommends the Commission ask for a breakdown of refunds given, such as those for courtesy credits versus specific charge refunds. Regardless, there should be little additional burden on carriers to meet the first requirement, as information regarding revenues and refunds would be kept in much greater depth by most carriers. The second requirement seems to ignore the Commission's commitment to hold telephone companies accountable for the services they provide, depending on the definition of "service provider."

In addition to requiring the records be retained, as stated, the Commission should require the information be available for auditing and should periodically audit the information to ensure the validity of the records retained. Again, by auditing the records the Commission would have a more complete understanding of cramming as well as the methods and tactics employed by the companies to investigate cramming complaints. In addition, the Commission could confirm that the companies were not only recording their complaints accurately, but also that the companies were resolving their cramming complaints as required by §2890(e).

**Public availability of cramming reports**

The Commission should address to what extent these reports will be publicly available. More detailed reports would likely involve more personal information, but provide the necessary detail for the Commission to conduct oversight and enforcement. To the extent the reported information does not disclose personal information, the utmost should be done to make that information available to the public for review.

**Conclusion**

The Commission should seize this opportunity to adopt a thorough reporting requirement that meets the mandates of the relevant cramming legislation and Commission decisions. This means requiring reports that 1) include all cramming complaints, not just those unresolved within 30 days 2) include specific details of the cramming issue or dispute, and 3) avoid adopting definitions and citing examples that unwittingly eliminate large pieces of the cramming puzzle. The results of these reports should then be as publicly available as is possible. Finally, recording of cramming complaint data should be mandated, and periodically audited by the Commission.

Cramming continues to be predominant in day to day abuses in the telecommunications industry, and a thorough reporting requirement will provide the necessary means to achieve the oversight and enforcement that the citizens of California deserve, and the Legislature has mandated.

Respectfully submitted, Dated: April 7, 2008

___/s/______________________

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**PROOF OF SERVICE**

I, Laura Impastato, declare: I am employed in the City and County of San Diego, California. I am over the age of 18 years. On April 7, 2008, I served the Comments of the Utility Consumers' Action Network regarding proposed cramming reporting requirements upon the public service list in this proceeding, as well as the ALJ.

______/s/____________________
Laura Impastato

# CALIFORNIA PUBLIC UTILITIES COMMISSION
# Service Lists

**Proceeding: R0002004 - PUC - OIR TO ESTABLI**
**Filer: CPUC**
**List Name: LIST**
**Last changed: March 28, 2008**

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