

and guess at the results. The developments in telecommunications in this decade, particularly in the wireless industry, coupled with deregulation efforts, have led to a tremendous variety and amount of cramming. The cramming problem is real, yet there is severe lack of systematic data collection to understand the complete impact that cramming has on the consumer, and the primary culprits and causes of cramming.

I. Costs and Benefits of Reporting Requirements.

Commentators recognize that reporting all cramming complaints over 30 days would cost at least as much as reporting all cramming complaints and would be an addition burden to distinguish between all cramming complaints and those cramming complaints unresolved after 30 days. Because of the burden, costs, and uselessness associated with the reporting of all cramming complaints unresolved after 30 days, and the benefits of reporting all cramming complaints as discussed herein, all references to reporting in this section (unless otherwise indicated), refer to reporting all cramming complaints. The wireless carriers and CTIA generally discuss the costs associated with reporting. According to CTIA, the four major wireless carriers would only incur up front cost of \$39,000,000¹ and annual reporting and tracking costs around \$85,000,000.² Those unsupported estimates are to “track all complaints related to the placement of an allegedly unauthorized charge on the customer’s bill (including the date received), produce associated reports, as well as undertake the three-year record retention processes.”³ Carriers, such as Cricket Wireless, indicate the initial setup and continuation

¹ It is unclear from CTIA’s statement whether the \$39,000,000 would be per carrier or whether the \$39,000,000 would be a total implementation cost for all four carriers.

² CTIA, Comments at 9

³ CTIA Comments at 8

costs would be significantly less for their company.⁴ None of the carriers discuss the potential or likelihood of these costs being passed directly to the consumer as most carriers already charge customers to help defray costs of associated with complying with federal, state, and local regulations.⁵ The carriers also do not discuss any of the potential savings that could result from the reduction of cramming that should result from the identification of bad actors and action by the carriers and the Commission to prevent those bad actors from attempting to steal from subscribers.

The DRA would reject any argument of an administrative burden on the carriers and suggested that it may request an opportunity to obtain discovery and a hearing facilitating a Commission ruling based on the evidence should a factual dispute arise.⁶ UCAN supports the position of the DRA as it appears evident from the DRA's findings and the filings of the major wireless carriers and CTIA that the carriers do or should already have the capability of tracking cramming complaints. For instance, Verizon Wireless acknowledges that part of its agreements with third-party service providers includes a provision that Verizon Wireless may suspend or terminate the provider if "Verizon receives fifteen (15) or more escalated complaints during any calendar month from end-users stating that they have been crammed."⁷ In order for Verizon Wireless to enforce the provisions of its contract it must have some minimal system in place where either the Customer Service Representative or the individual to whom the complaint is escalated is acknowledging the complaint as cramming and is tracking the number of complaints being received. In addition, under the current customer service resolution

⁴ Cricket Communications, Comments at 7

⁵ E.g. AT&T surcharges, Sprint regulatory charge, T-mobile regulatory program fee, Verizon Wireless surcharges, Cricket Wireless Regulatory Recovery Fee.

⁶ DRA, Comments at 13

⁷ Verizon Wireless, Comments at 3.

system of one call resolution⁸ it would seem that the majority of complaints that the carrier receives would not be escalated. While some individuals may be credited individually the actual cramming will continue until a customer seeks a resolution beyond calling every month for a credit for the unauthorized charge.⁹

The carriers also use the fact that customer service representatives are trained to resolve a customer call in a one and done fashion as a justification for the representatives not being able to distinguish between a cramming complaint and an inquiry.¹⁰ UCAN views such a statement as a blatant admission that the carriers are not in compliance with the requirements of G.O. 168 and the California Public Utilities Code §2890. Under the statute and regulations, the carrier is under an obligation to validate the authorization for the product or service or credit the customer. In order for a customer service representative to know to show validation for the charge or credit the customer, the representative would need to be able to distinguish a cramming dispute from an inquiry. Further, the carrier, and particularly the customer service representative, is unlikely to have the proof of validation, such as an acceptance text message, immediately available for validation and would likely have to contact other departments or the third party service provider to receive the required proof of validation. This means that a cramming dispute is not always well served by a “one and done” type policy, and often requires a reasonable investigation that may take more than a few minute phone call to provide full resolution.

The carrier’s argument that the subscriber would be burdened by having to spend

⁸ Verizon Wireless, Comments at 12.

⁹ UCAN, Comments at 9. Discussing UCAN’s example victim in adjudicatory case 06-10-023 who called MCI 9 times without systematic resolution.

¹⁰ AT&T, Comments at 10

more time on the phone with customer service in order for the representative to record all of the required information for tracking¹¹ is also unconvincing. First, in order to understand the nature of the subscriber's call the representative would need to receive much of the information being tracked in reports such as the name of the service the customer is disputing. Second, it has been UCAN's experience that a subscriber would rather spend a longer period on phone call with customer service than continually call month after month to receive the appropriate credit for a service that a third party service provider or the carrier themselves will not properly stop charging the subscriber. Third, tracking cramming complainants will allow the carriers to better determine which third party subscribers are "bad actors" in a timely fashion and discontinue affiliation with those organizations. In doing so, the carriers would potentially reduce the overall amount of cramming and reduce the number of calls a subscriber must make to customer service.

Lastly, though the Commission's objective is to identify bad actors through these reporting requirements, the Commission's goal is to stop cramming. The carriers control what charges are placed on a subscriber's bill and receive the complaints of subscribers for charges that should not appear on their bill. The carriers are in the best position to track cramming complaints to allow the Commission to review the information and determine the continued prevalence of cramming. The carriers reporting requirements are intrinsically tied to the amount of cramming the carrier allows to occur, if the carrier does not cram and acts to stop third party service providers who cram then there will be less to report and fewer costs to the carrier.

¹¹ Cricket Communications, Comments at 7 and AT&T, Comments at 10

II. The cramming data requested must be useful to the Commission.

As UCAN highlighted in its initial comments, the main purposes of a cramming reporting requirement, to help inform the Commission's regulatory and enforcement efforts, is not met by the cramming reporting requirement suggested in the ACR. This is true with regards to a complaint reporting requirement that 1) includes only complaints unresolved after 30 days, and 2) does not include enough complaint specific data. The initial comments of parties suggest a broad consensus that the Commission should simply abandon consideration of the proposal to only include complaints unresolved after 30 days. As far as the data to be included in reports, initial comments affirm a need for a more detailed report, which would serve to meet the needs of the Commission's enforcement efforts as well as the statutory requirement for cramming reports.

The ACR largely centered discussion around a proposal that only requires companies to submit reports regarding complaints unresolved after 30 days. As UCAN highlighted in its initial comments to this ACR, Part 4 of General Order 168 requires companies to either 1) verify the complaint or 2) credit the customer, in less than 30 days.¹² Carriers themselves suggest in their comments that compliance with current requirements regarding complaint resolution mean that little information would be reported under the proposed cramming requirement.¹³

¹² UCAN, Comments at 8.

¹³ AT&T, Comments at 14.

In AT&T's section entitled "*The 30-Day Reporting Requirement Should Be Rejected*," AT&T states that

"AT&T's practice in accordance with G.O. 168 is to resolve cramming complaints on the first call. Accordingly, AT&T anticipates that there would not be a significant number of over 30-day complaints to report, if any."

Verizon's initial comments also address the usefulness of reports of complaints unresolved after 30 days, stating that

"for third-party related charges no complaints remain unresolved after 30 days from a billing telephone company perspective."¹⁴

UCAN agrees with AT&T and Verizon that little if no data would be reported by AT&T and Verizon under the proposed requirements. The lack of reporting would be true at other carriers as well. UCAN agrees limiting reported complaints to those unresolved after 30 days makes reporting virtually useless. Where we differ is on alternatives. UCAN prefers a reporting requirement that includes all complaints, as well as more detailed reporting on complaints. The carriers prefer another insufficient option which leaves the regulation of cramming under their control, rather than that of the Commission.

As far as the detail of information requested in reports, UCAN finds itself in agreement with many carriers that the requested information is insufficient. In its initial comments, UCAN summarized the flaws in the details requested in the proposed reporting requirement, stating that

"[w]hile 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."¹⁵

¹⁴ Verizon Wireless, Comments at 12.

¹⁵ UCAN, Comments at 10.

UCAN is glad to note that CTIA agrees with UCAN on the insufficiency of the reported data, stating that

“data about the number of complaints received is not really meaningful without an understanding of the factual context of each complaint”¹⁶

CTIA also acknowledges that the difference in cost between tracking and reporting all cramming complaints and cramming complaints unresolved after 30 days would be minimal, stating that

“The ACR sets forth two reporting proposals, the primary differential being whether the monthly reporting requirement would be for all cramming complaints or for cramming complaints that are not resolved in 30 days. This difference, however, does not have a significant impact on the magnitude of the system and operational changes which a wireless carrier would need to undertake to track the information.”¹⁷

This is why UCAN proposes in its initial comments that reports should “include specific details of the cramming issue or dispute.” Without these details cramming reports become useless for even understanding the cramming landscape, let alone as enforcement tools.

Further, there is a significant danger that definitions and examples appearing in the ACR unwittingly eliminate large pieces of the cramming puzzle. In its initial comments UCAN offered observations on avoiding undermining key definitions, and with regards to examples cited in the ACR, UCAN stated that

“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. 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

¹⁶ CTIA, Comments at 18.

¹⁷ CTIA, Comments at 6.

or lost phone.’ These examples should not be used as examples of what is not cramming for any purposes, including reporting.”¹⁸

UCAN’s fears regarding carriers’ willingness to exploit these weaknesses in the proposed reporting requirement appear validated by parties’ initial comments. For example, Verizon’s comments particularly expose the carrier’s intent to use definitions and examples to limit the amount of information reported. Verizon states that

“At a minimum, the Commission’s definition of authorization should include Section 2890’s “prima facie” language. But even if it does, there are many scenarios under which a subscriber will raise a billing dispute that, if reported, will not provide Commission staff with information useful to identify bad actors. Staff recognized this and in its workshop report listed ten such scenarios that would not be deemed cramming for reporting purposes. See ACR, Appendix C at C-8 and C-9 (reproducing the “Final Staff Workshop Report on Proposed Cramming Reporting Requirements” dated October 13, 2006). While the Commission could include the list of ten in its final decision, that solution is incomplete because other scenarios may arise now and in the future that may require reporting but are nothing more than run-of-the-mill billing disputes.

Verizon’s comments regarding the “prima facie” language regarding direct dialed calls in current cramming law suggests a limitation on its reporting with regards to disputes regarding direct dialed phone calls. UCAN’s experience is that direct dialed phone calls are a commonly the subject of consumer cramming complaints. Verizon’s comments suggest the potential for elimination of these types of complaints from cramming reports is significant. Verizon then points directly to the examples cited in the ACR as “scenarios that would not be deemed cramming for reporting purposes.” UCAN again suggests that the examples in the ACR, taken from the workshop, be carefully reviewed before they are included in any decision. In particular, the four examples cited above in UCAN’s initial comments, 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

¹⁸ UCAN, Comments at 11.

stolen or lost phone’ must be eliminated from any decision to avoid severely limiting the data received by the Commission from cramming reports.

UCAN supports the adoption of DRA’s suggest that cramming complaints should be provided from all telephone companies and billing aggregators, agents, and third-party vendors that bill directly through a telephone company in a monthly cramming complaint report and that the information should be provided in the following format.

The billing telephone company would compile information from these complaints in an Excel spreadsheet containing the following information:

1. A record of each cramming complaint received. Each record would equate to a single row in the Excel spreadsheet and include the following information
 - Date received
 - Billed telephone number
 - Service provider’s business name
 - Service provider contact information
 - Type(s) of service billed
2. The total number of cramming complaints related to each service provider.
3. Either (a) the total number of telephone numbers billed for each month OR (b) the total dollars billed and total dollars refunded for each month (also commonly referred to as a “refund rate”).¹⁹

Lastly, carriers suggest by their comments that they will have the ability to engage in similar manipulation of the proposed requirements with regards to record retention.

For example CTIA states

“Moreover, with respect to the proposed three year record retention requirements, both the Staff Workshop Report (at p. 28), and the ACR (at p. 20) make clear that carriers would be required to retain only certain information for the three year period, and only to the extent that information already exists. In other words, carriers are not required to create new records, or modify their systems to retain information they do not already record. With that understanding, CTIA submits that such three year record retention requirement is not objectionable and should allow wireless carriers to provide the Commission with additional information, when requested, to aid in any investigation or enforcement action the Commission may be undertaking.²⁰

¹⁹ DRA, Comments at 29 & 30.

²⁰ CTIA, Comments at 10 & 11

UCAN believes that approach again places too much of the power to control regulation in the hands of carriers. The concern is that this approach will lead to carriers endeavoring to eliminate and severely limiting the information that is retained, thereby reducing the usefulness of the records to the Commission's enforcement efforts. In order to alleviate this concern UCAN supports the adoption of DRA's recommendation for stored data. DRA stated that

Given the exponentially increased electronic storage capabilities available to businesses today, it is not unreasonable to request that these entities retain for three years all relevant supporting documentation developed in the normal course of their business, including but not limited to:

1. The subscriber telephone number and the unique subscriber identifier, if any;
2. The name of the service provider responsible for the alleged unauthorized charge;
3. The name of the billing agent or billing agents, if any;
4. The amount of the alleged unauthorized charge and the date the charge was incurred and billed;
5. A description of the product or service billed;
6. The disposition of the dispute; and
7. A record of the original subscriber authorization for the charge, if any.²¹

Requiring carriers to retain specific information would allow the Commission to sufficiently enforce the cramming rules and regulations through the availability of specific and useful knowledge and information regarding cramming.

III. The carriers' alternative, to report termination of third party vendor/service provider or billing aggregator for cramming related activities is insufficient

²¹ DRA, Comments at 30 & 31

The carriers suggest rather than tracking cramming complaints that they be allowed to report to the Commission when a third party service provider is terminated for cramming related activities.²² Though this data would be useful to the Commission, it is insufficient and too easily manipulated for the records to provide data useful for achieving the Commission's objective of tracking cramming to allow it to perform its enforcement and investigation responsibilities, and thereby meeting the Commission's goal of reducing cramming.

First, how and when a carrier terminates their relationship with a third party is a matter of contract between the third party and the carrier. It is information to which the public is not currently privileged. However, it is likely that each carrier would have somewhat different standards for terminating a carrier and the decision to terminate would ultimately depend on a carrier's decision maker to determine that the third party provider is beyond suspension, out of opportunities to cure, and the decision to terminate was for the third parties cramming activities and not for another business decision.²³ The subjective nature of such a decision could lead to similar opportunities for manipulation as exist in the ACR proposed reporting requirement. The result would likely be that the Commission would receive few to no reports, but numerous consumers would still be burdened with crammed charges, of which they may or may not be aware.

Second, reporting the termination of only third parties ignores the fact that the carriers supply products and services to subscribers themselves, and may be guilty of cramming if the service or product was not authorized by the subscriber. The failure of

²² CTIA, Comments at 10-11; AT&T Comments at 15-16; Verizon Wireless, Comments at 5-6; Cricket Communication Comments at 9-11.

²³ e.g. Verizon Wireless, Comments at 3-5 (Discussing Verizon Wireless contractual relationship with third party service providers).

carriers to acknowledge their own cramming violations is perhaps the “elephant in the room” of this regulatory proceeding. The carriers’ proposal completely ignores the concept of cramming by carriers. Carriers offer services such as text messaging, data services, picture mail, and appear to be offering ring tones and answer tones directly.²⁴ Wireline carriers also directly offer an extensive number of services such as caller id, wire maintenance, and voicemail. These services may be placed on a subscriber’s phone bill without his or her authorization, just as services from third party providers may be placed on a subscriber’s phone bill. If carriers are allowed to only report the termination of third party service providers a number of cramming issues would go unacknowledged, and carriers and the Commission would be deprived a mechanism to ensure that none of their employees representatives, or services are improperly engaged in cramming activities.

Lastly, the carriers method of determining whether a third party service provider should be terminated for cramming would inherently require some level of tracking and reporting by the carriers. The carriers should disclose the tracking they engage in to determine if a third party service provider should be terminated. The Commission would then be in a better position to determine if the information tracked currently by the carriers would be sufficient for the cramming reporting requirements. If the information tracked is sufficient then the carriers would only need to additionally track cramming disputes concerning products or services the carrier offers. The information could likely be tracked in the same manner as the third party service providers’ information is tracked. If the Commission was to determine that the manner for tracking complaints to terminate third parties was insufficient than the report of terminated third party service providers

²⁴ e.g AT&T Ringtones & More: http://www.wireless.att.com/cell-phone-service/ringtones_media/index.jsp

would likely be insufficient for the Commission to properly gauge the level of cramming occurring and enforce the cramming rules and regulations.

Respectfully submitted,

Dated: April 28, 2008

_____/s/_____
Art Neill
Michael Shames
Utility Consumers' Action Network (UCAN)
3100 5th Ave. Suite B
San Diego, CA 92103
(619) 696-6966
Fax: 696-7477
art@ucan.org

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 28, 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

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Parties

CHARLES HARAK
NATIONAL CONSUMER LAW CENTER
77 SUMMER STREET, 10TH FLOOR
BOSTON, MA 02110
FOR: NATIONAL CONSUMER LAW CENTER

BARBARA R. ALEXANDER
CONSUMER AFFAIRS CONSULTANT
83 WEDGEWOOD DRIVE
WINTHROP, ME 04364
FOR: AARP

JOHN BEAHN
SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
1440 NEW YORK AVE
GENERAL
WASHINGTON, DC 20005
713
FOR: VIRGIN MOBILE USA, LLC

TERRANCE A. SPANN
U.S. ARMY LITIGATION CENTER
OFFICE OF THE JUDGE ADVOCATE
901 N STUART STREET, SUITE
ARLINGTON, VA 22203-1837
FOR: US DEPARTMENT OF DEFENSE

AND ALL

OTHER FEDERAL EXECUTIVE

AGENCIES

HOLLY HENDERSON
GTE WIRELESS
MAIL CODE GA3B1 REG
COMMUNICATIONS
ONE GTE PLACE
ALPHARETTA, GA 30004

KEVIN SAVILLE
ASSOCIATE GENERAL COUNSEL
CITIZENS/FRONTIER
2378 WILSHIRE BLVD.
MOUND, MN 55364

FOR: GTE WIRELESS, INC.
ICATIONS

FOR: CITIZENS/FRONTIER COMMU

CHRISTINA V. TUSAN
ATTORNEY AT LAW
CALIFORNIA DEPARTMENT OF JUSTICE
OFFICE
300 SOUTH SPRING ST., 11TH FLOOR
LOS ANGELES, CA 90012
FOR: CALIFORNIA ATTORNEY GENERAL

EDWARD J. PEREZ
ASSISTANT DISTRICT ATTORNEY
LOS ANGELES CITY ATTORNEY'S
200 N. MAIN STREET, ROOM 1800
LOS ANGELES, CA 90012
FOR: CITY OF LOS ANGELES

ANDREW W. SONG
MUNGER, TOLLES & OLSON
355 SOUTH GRAND AVE, 35/F
AMERICA LOCAL
LOS ANGELES, CA 90071-1560
FOR: VERIZON WIRELESS

MICHAEL J. HARTIGAN
PRESIDENT
COMMUNICATIONS WORKERS OF
7844 ROSECRANS AVENUE
PARAMOUNT, CA 90723
FOR: COMMUNICATIONS WORKERS

OF AMERICA

LOCAL 9400

JESUS G. ROMAN
VERIZON CALIFORNIA INC
112 LAKEVIEW CANYON ROAD, CA501LB
THOUSAND OAKS, CA 91362
FOR: VERIZON

JACQUE LOPEZ
VERIZON CALIFORNIA INC.
CA501LB
112 LAKEVIEW CANYON ROAD
THOUSAND OAKS, CA 91362-3811

CARL HILLIARD
WIRELESS CONSUMERS ALLIANCE, INC.
PO BOX 2090
DEL MAR, CA 92014
FOR: WIRELESS CONSUMERS ALLIANCE, INC.

ESTHER NORTHRUP
COX COMMUNICATIONS
350 10TH AVENUE SUITE 600
SAN DIEGO, CA 92101
FOR: COX CALIFORNIA TELCOM

KEITH W. MELVILLE
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET, HQ 12
SAN DIEGO, CA 92101
FOR: SAN DIEGO GAS & ELECTRIC COMPANY

LORI ORTENSTONE
ATTORNEY AT LAW
AT&T SERVICES, INC.
ROOM 1300
101 W. BROADWAY
SAN DIEGO, CA 92101

MICHAEL SHAMES
ATTORNEY AT LAW
UTILITY CONSUMERS' ACTION NETWORK
CARDOZO
3100 FIFTH AVENUE, SUITE B
SAN DIEGO, CA 92103
94080

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS, BROADWELL, JOSEPH &
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA

OF AMERICA

FOR: COMMUNICATIONS WORKERS

CHRISTINE MAILLOUX
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
300
SAN FRANCISCO, CA 94102
FOR: THE UTILITY REFORM NETWORK

ELAINE M. DUNCAN
ATTORNEY AT LAW
VERIZON CALIFORNIA
711 VAN NESS AVENUE, SUITE

SAN FRANCISCO, CA 94102

MARGARITA GUTIERREZ
DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 375
SAN FRANCISCO, CA 94102
FOR: OFFICE OF THE SAN FRANCISCO CITY
ATTORNEY

ROBERT FINKELSTEIN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., SUITE 350
SAN FRANCISCO, CA 94102

CHRIS WITTEMAN
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
LEGAL DIVISION
ROOM 5129
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SINDY J. YUN
CALIF PUBLIC UTILITIES

LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: ORA

MALCOLM YEUNG
STAFF ATTORNEY
ASIAN LAW CAUCUS
939 MARKET ST., SUITE 201
SAN FRANCISCO, CA 94103

MARK SAVAGE
ATTORNEY AT LAW
CONSUMERS UNION OF U.S., INC.
1535 MISSION STREET
SAN FRANCISCO, CA 94103

KATHERINE S. RITCHEY
JONES DAY
555 CALIFORNIA ST., 26/F
SAN FRANCISCO, CA 94104-1500
912

STEPHEN B. BOWEN
ATTORNEY AT LAW
BOWEN LAW GROUP
235 MONTGOMERY STREET, SUITE

SAN FRANCISCO, CA 94104-3000
FOR: RHYTHMS LINKS, INC.

DAVID DISCHER
ATTORNEY AT LAW
PACIFIC BELL TELEPHONE COMPANY
525 MARKET STREET, RM. 2027
SAN FRANCISCO, CA 94105
FOR: AT&T

DAVID P. DISCHER
SBC
525 MARKET STREET, ROOM 2027
SAN FRANCISCO, CA 94105

KRISTIN L. JACOBSON
SPRINT NEXTEL
200 MISSION STREET, SUITE 1400
SAN FRANCISCO, CA 94105

MARY E. WAND
ATTORNEY AT LAW
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR: GTE WIRELESS, INC.

WALTER MCGEE
WORKING ASSETS FUNDING SERVICE
101 MARKET STREET NO 700
SAN FRANCISCO, CA 94105

JAMES MCTARNAGHAN
ATTORNEY AT LAW
DUANE MORRIS LLP
ONE MARKET, SPEAR TOWER 2000
SAN FRANCISCO, CA 94105-1104
FOR: VERIZON WIRELESS

STEPHEN H. KUKTA
SPRINT NEXTEL
200 MISSION STREET, STE. 1400
SAN FRANCISCO, CA 94105-1831
FOR: WIRELINE GROUP

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVENUE
SAN FRANCISCO, CA 94107

MARILYN H. ASH
U.S. TELEPACIFIC CORP.
620/630 3RD ST.
SAN FRANCISCO, CA 94107
FOR: U.S. TELEPACIFIC CORP.

PETER A. CASCIATO
A PROFESSIONAL CORPORATION
PETER A. CASCIATO, PC
355 BRYANT STREET, SUITE 410
SAN FRANCISCO, CA 94107
FOR: VIA WIRELESS (FORMERLY)

CENTRAL

WIRELESS PARTNERS

CARL K. OSHIRO
ATTORNEY AT LAW
CSBRT/CSBA
2000
100 PINE STREET, SUITE 3110
SAN FRANCISCO, CA 94111
FOR: CSBRT/CSBA

DARREN WEINGARD
REED SMIT LLP
TWO EMBARADERO CENTER, SUITE
SAN FRANCISCO, CA 94111

ENRIQUE GALLARDO
ATTORNEY AT LAW
LATINO ISSUES FORUM
RITCHIE & DAY LLP
160 PINE STREET, SUITE 700
SAN FRANCISCO, CA 94111
FOR: LATINO ISSUES FORUM
ASSOCIATION

JEANNE B. ARMSTRONG
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: CTIA-THE WIRELESS

JEFFREY F. BECK
ATTORNEY AT LAW
COOPER, WHITE & COOPER ,L.L.P.
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO, CA 94111
FOR: EVANS/HAPPY
VALLEY/HORNITOS/KERMAN/PINNACLES/SISIYOU
/VOLCANO/WINTERHAVEN TELEPHONE COS.

MARK LYONS
SIMPSON PARTNERS LLP
SUITE 1800
TWO EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
FOR: TELIGENT SERVICES

MARK P. SCHREIBER
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
LAMPREY LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111
FOR: ROSEVILLE TELEPHONE COMPANY,
ASSOCIATION OF
CALAVERAS, CAL-ORE, DUCOR, FORESTHILL,
PONDEROSA, SIERRA TEL. CO.

PATRICK M. ROSVALL
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
2000
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

SARAH DEYOUNG
EXECUTIVE DIRECTOR
CALTEL
LAMPREY LLP
50 CALIFORNIA STREET, SUITE 1500
SAN FRANCISCO, CA 94111
FOR: CALTEL
OF
CARRIERS

SUZANNE TOLLER
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: CRICKET COMMUNICATIONS,
COMM/TMC
INC./WIRELESS SERVICES OF
CONCEPTS, INC.
CALIFORNIA/CINGULAR WIRELESS

DOUGLAS F. CARLSON
PO BOX 191711
SAN FRANCISCO, CA 94119-1711
SELBY
FOR: SELF

RICHARD HOLOBER
CONSUMER FEDERATION OF CALIFORNIA
520 S. EL CAMINO REAL, SUITE 340
SAN MATEO, CA 94402

MICHAEL B. DAY
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: CELLULAR CARRIERS
CALIFORNIA

RAYMOND A. CARDOZO
REED SMITH LLP
TQO EMBARADERO CENTER, SUITE
SAN FRANCISCO, CA 94111

THOMAS J. MACBRIDE, JR.
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY &
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: CALIFORNIA ASSOCIATION
COMPETITIVE COMMUNICATIONS

GLENN STOVER
ATTORNEY AT LAW
STOVER LAW
584 CASTRO ST., NO 199
SAN FRANCISCO, CA 94114-2594
FOR: SAGE TELECOM/TRI-M
COMM/ANEW TELECOM/BILLING

EARL NICHOLAS SELBY
ATTORNEY AT LAW
LAW OFFICES OF EARL NICHOLAS
418 FLORENCE STREET
PALO ALTO, CA 94301-1705
FOR: ICG TELECOM GROUP, INC.

BETSY GRANGER
2600 CAMINO ROMAN, ROOM 2W904
SAN RAMON, CA 94583

ISABELLE M. SALGADO
ATTORNEY AT LAW
LLC
AT&T CALIFORNIA
200
2600 CAMINO RAMON, RM. 2W901
SAN RAMON, CA 94583
FOR: SBC CALIFORNIA

JOHN R. GUTIERREZ
COMCAST PHONE OF CALIFORNIA,
12647 ALCOSTA BLVD., SUITE
SAN RAMON, CA 94583

JOANN RICE
SOUTHWESTERN BELL COMMUNICATIONS SERVICE
5850 W. LAS POSITAS BLVD.
PLEASANTON, CA 94588
1620
FOR: SOUTHWESTERN BELL COMMUNICATIONS
SERVICES, INC.
COMMUNICATIONS, INC. DBA

LEON M. BLOOMFIELD
ATTORNEY AT LAW
WILSON & BLOOMFIELD, LLP
1901 HARRISON STREET, SUITE
OAKLAND, CA 94612
FOR: OMNIPOINT

T-MOBILE

LESLA LEHTONEN
VP LEGAL & REGULATORY AFFAIRS
CALIFORNIA CABLE TELEVISION ASSOCIATION
ASSOCIATION
360 22ND STREET, NO. 750
OAKLAND, CA 94612
FOR: CALIFORNIA CABLE TELEVISION
ASSOCIATION

MARIA POLITZER
LEGAL DEPARTMENT ASSOCIATE
CALIFORNIA CABLE TELEVISION
360 22ND STREET, NO. 750
OAKLAND, CA 94612

THALIA N.C. GONZALEZ
LEGAL COUNSEL
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
FLOOR
BERKELEY, CA 94704
FOR: THE GREENLINING INSTITUTE
FOR

MELISSA W. KASNITZ
ATTORNEY AT LAW
DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD
BERKELEY, CA 94704-1204
FOR: CALIFORNIA FOUNDATION

INDEPENDENT LIVING CENTER

WAYNE B. COOPER
ATTORNEY AT LAW
CALIFORNIA
THIRTY OAKLAND AVENUE
SAN ANSELMO, CA 94960
FOR: PRIME MATRIX WIRELESS COMMUNITIES,
CALIFORNIA
INC./INCOMNET COMMUNICATIONS CORP

IGNACIO HERNANDEZ
CONSUMER FEDERATION OF
428 J STREET, SUITE 400
SACRAMENTO, CA 95814
FOR: CONSUMER FEDERATION OF

NORINE MARKS
STAFF COUNSEL

STAN STATHAM
PRESIDENT/CEO

DEPARTMENT OF CONSUMER AFFAIRS
ASSOCIATION
LEGAL SERVICES UNIT
400 R STREET, SUITE 3090
SACRAMENTO, CA 95814
FOR: CALIFORNIA DEPARTMENT OF CONSUMER
AFFAIRS

CALIFORNIA BROADCASTER

915 L STREET, SUITE 1150
SACRAMENTO, CA 95814

STEVE BLACKLEDGE
CALIF.PUBLIC INTEREST RESEARCH GROUP, INC
1107 9TH STREET, STE. 601
SACRAMENTO, CA 95814

CINDY MANHEIM
CINGULAR WIRELESS
PO BOX 97061
REDMOND, WA 98073-9761

Information Only

HARRY N. MALONE
BINGHAM MCCUTCHEN LLP
2020 K STREET, NW
WASHINGTON, DC 20006
FOR: PAETEC COMMUNICATIONS, INC.

ROBERT A. SMITHMIDFORD
VICE PRESIDENT
BANK OF AMERICA
8011 VILLA PARK DRIVE
RICHMOND, VA 23228-2332
FOR: BANK OF AMERICA

CORALETTE HANNON
ESQUIRE
AARP LEGISLATIVE REPRESENTATIVE
CALIFORNIA, INC.
6705 REEDY CREEK ROAD
15EA17
CHARLOTTE, NC 28215
FOR: AARP
CALIFORNIA

CHERYL L. HAMILL
SENIOR ATTORNEY
AT&T COMMUNICATIONS OF

222 W. ADAMS STREET, ROOM

CHICAGO, IL 60606-5307
FOR: AT&T COMMUNICATIONS OF

INC.

KATHERINE K. MUDGE
ATTORNEY AT LAW
POLICY
COVAD COMMUNICATIONS COMPANY
CORPORATION
7000 NORTH MOPAC EXPRESSWAY, 2ND FLOOR
4700
AUSTIN, TX 78731

MARJORIE HERLTH
REGIONAL DIRECTOR, PUBLIC

QWEST COMMUNICATIONS

1801 CALIFORNIA ST., SUITE

DENVER, CO 80202

GREGORY T. DIAMOND
COVAD COMMUNICATIONS COMPANY
7901 LOWRY BLVD.
DENVER, CO 80230

JEFF SILVA
RCR WIRELESS NEWS
1746 COLE BLVD., STE. 150A
LAKEWOOD, CO 80401-3208

REX KNOWLES

NAN JAEGER

REGIONAL VICE PRESIDENT
XO COMMUNICATIONS SERVICES, INC.
90274
111 EAST BROADWAY, SUITE 1000
SALT LAKE CITY, UT 84111

2817 VIA ALVARADO
PALOS VERDES ESTATES, CA

PAMELA PRESSLEY
LITIGATION PROGRAM DIRECTOR
AND CONSUMER
FOUNDATION FOR TAXPAYER&CONSUMER RIGHTS
1750 OCEAN PARK BLVD., SUITE 200
SANTA MONICA, CA 90405
TAXPAYER AND

HARVEY ROSENFELD
THE FOUNDATION FOR TAXPAYER
1750 OCEAN PARK BLVD., 200
SANTA MONICA, CA 90405-4938
FOR: THE FOUNDATION FOR

CONSUMER

BRUCE KAUFMAN
CONTROLEX CORP.
16005 SHERMAN WAY, SUITE 105
VAN NUYS, CA 91406
FOR: CONTROLEX CORP.

W. LEE BIDDLE, ESQ.
FERRIS AND BRITTON, APC
401 W. A ST., SUITE 1600
SAN DIEGO, CA 92101
FOR: COX COMMUNICATIONS, INC.

ART NEILL
ATTORNEY AT LAW
UTILITY CONSUMERS' ACTION NETWORK
3100 5TH AVE. SUITE B
SAN DIEGO, CA 92103
INC.

LAURIE ITKIN
CRICKET COMMUNICATIONS, INC.
10307 PACIFIC CENTER COURT
SAN DIEGO, CA 92121
FOR: CRICKET COMMUNICATIONS,

MICHAEL BAGLEY
VERIZON WIRELESS
15505 SAND CANYON AVENUE
IRVINE, CA 92612

MIKE MULKEY
ARRIVAL COMMUNICATIONS
1807 19TH STREET
BAKERSFIELD, CA 93301

LYNNE KERR
SENIOR VICE PRESIDENT
RHA, INC.
590 WEST LOCUST AVENUE
FRESNO, CA 93650
FOR: RHA, INC.

ELAINE WALLACE
JONES DAY
555 CALIFORNIA STREET, 26/F
SAN FRANCISCO, CA 94104

CRAIG E. STEWART
JONES DAY
555 CALIFORNIA STREET, 26/F
16
SAN FRANCISCO, CA 94104-1500

BRENDA J. CLARK
AT&T CALIFORNIA
525 MARKET STREET, 19TH FLOOR
SAN FRANCISCO, CA 94105
FOR: AT&T CALIFORNIA

HENRY WEISSMANN
ATTORNEY AT LAW

KATY M. LINDSAY
AT&T

MUNGER, TOLLES & OLSON LLP
ABIDE 4
560 MISSION STREET, 27/F
SAN FRANCISCO, CA 94105
FOR: VERIZON WIRELESS

525 MARKET ST. 19TH FLOOR,
SAN FRANCISCO, CA 94105

MARTHA JOHNSON
DIRECTOR-REGULATORY
AT&T CALIFORNIA
NO.2
525 MARKET ST., SUITE 1922
SAN FRANCISCO, CA 94105
FOR: AT&T CALIFORNIA

MICHELLE K. CHOO
A T & T CALIFORNIA
525 MARKET ST., 20TH FLOOR
SAN FRANCISCO, CA 94105
FOR: A T & T CALIFORNIA

NELSONYA CAUSBY
GENERAL ATTORNEY-REGULATORY
AT&T CALIFORNIA
525 MARKET ST., STE 2025
RM 2023
SAN FRANCISCO, CA 94105
FOR: AT&T CALIFORNIA

THOMAS SELHORST
SENIOR PARALEGAL
AT&T CALIFORNIA
525 MARKET STREET, 20TH FLR,
SAN FRANCISCO, CA 94105

NANCY E. LUBAMERSKY
VICE PRESIDENT
U.S. TELEPACIFIC CORP.
FLOOR
620/630 3RD ST.
SAN FRANCISCO, CA 94107

JAMES A. BOOTHE
HOLLAND & KNIGHT LLP
50 CALIFORNIA STREET, 28TH
SAN FRANCISCO, CA 94111

SARAH LEEPER
ATTORNEY AT LAW
MANATT, PHELPS & PHILLIPS, LLP
800
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO, CA 94111
FOR: US CELLULAR

JUDY PAU
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE
SAN FRANCISCO, CA 94111-6533

PETER VICENCIO
METROPCS, INC.
1080 MARINA VILLAGE PARKWAY, 4TH FLOOR
ALAMEDA, CA 94501

LISA ANDREIKO
AT&T
5130 HACIENDA DR. RM 324
DUBLIN, CA 94568
FOR: AT&T

JOHN DI BENE
VICE PRESIDENT & GENERAL COUNSEL
SBC LONG DISTANCE
5850 WEST LAS POSITAS BLVD.
298
PLEASANTON, CA 94588

ANITA TAFF-RICE
ATTORNEY AT LAW
EXTENET SYSTEMS, LLC
1547 PALOS VERDES MALL, NO.
WALNUT CREEK, CA 94597

WILLIAM P. ADAMS
ADAMS ELECTRICAL SAFETY CONSULTING
716 BRETT AVENUE
ROHNERT PARK, CA 94928-4012

ETHAN SPRAGUE
PAC-WEST TELECOMM, INC.
4210 CORONADO AVE. STE A
STOCKTON, CA 95204-2341

JOSH P. THIERIOT
REGULATORY TEAM
PAC-WEST TELECOMM
4210 CORONADO AVE STE A
STOCKTON, CA 95204-2341

NANCY GRIFFIN
REGULATORY COMPLIANCE
PAC-WEST TELECOMM. INC.
1776 W. MARCH LANE, SUITE 250
STOCKTON, CA 95207
FOR: PAC-WEST TELECOMM INC.

YVONNE SMYTHE
CALAVERAS TELEPHONE COMPANY
PO BOX 37
COPPEROPOLIS, CA 95228

RICHARD H. LEVIN
ATTORNEY AT LAW
6741 SEBASTOPOL AVE STE 230
SEBASTOPOL, CA 95472-3838

CHARLES E. BORN
MANAGER-STATE GOVERNMENT AFFAIRS
FRONTIER, A CITIZENS TELECOMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

MICHAEL MORENO
AARP
1415 L ST STE 960
SACRAMENTO, CA 95814-3977
FOR: AARP

PETER LEWIS
SEATTLE TIMES
PO BOX 70
CORPORATION
SEATTLE, WA 98111

ADAM L. SHERR
ATTORNEY AT LAW
QWEST COMMUNICATIONS
1600 7TH AVENUE, 3206
SEATTLE, WA 98191-0000

State Service

KYLE DEVINE
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
PUBLIC ADVISOR OFFICE
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA 90013

MARCUS NIXON
CALIF PUBLIC UTILITIES
PUBLIC ADVISOR OFFICE
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA 90013

CHRISTOPHER POSCHL
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
UTILITY & PAYPHONE ENFORCEMENT
AREA 2-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DALE PIIRU
CALIF PUBLIC UTILITIES
COMMUNICATIONS POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HIEN VO
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
LEGAL DIVISION
ROOM 5135
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DIVISION OF RATE PAYER ADVOCATES

JANE WHANG
CALIF PUBLIC UTILITIES

EXECUTIVE DIVISION
ROOM 5029
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOEL TOLBERT
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
LAW JUDGES
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JONATHAN LAKRITZ
CALIF PUBLIC UTILITIES

DIVISION OF ADMINISTRATIVE

ROOM 5020
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KAREN MILLER
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
PUBLIC ADVISOR OFFICE
ROOM 2103
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KAREN P. PAULL
CALIF PUBLIC UTILITIES

LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LINDA J. WOODS
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
UTILITY & PAYPHONE ENFORCEMENT
AREA 2-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LINDSAY M. BROWN
CALIF PUBLIC UTILITIES

EXECUTIVE DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MARIBETH A. BUSHEY
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ENFORCEMENT
ROOM 5018
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MARK CLAIRMONT
CALIF PUBLIC UTILITIES

UTILITY & PAYPHONE

AREA 2-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NORA Y. GATCHALIAN
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
UTILITY & PAYPHONE ENFORCEMENT
IMPLEMENTATION BRAN
AREA 2-F
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RICHARD MANISCALCO
CALIF PUBLIC UTILITIES

PROGRAM MANAGEMENT &

AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RISA HERNANDEZ
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS BR
BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROBERT J. WULLENJOHN
CALIF PUBLIC UTILITIES
POLICY & DECISION ANALYSIS
ROOM 3207
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROSALINA WHITE
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
PUBLIC ADVISOR OFFICE
AREA 2-B
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SARITA SARVATE
CALIF PUBLIC UTILITIES
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SHERI INOUYE BOLES
CALIF PUBLIC UTILITIES COMMISSION
COMMISSION
RAIL SAFETY & CROSSING BRANCH
AREA 2-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

TERRIE D. PROSPER
CALIF PUBLIC UTILITIES
EXECUTIVE DIVISION
ROOM 5301
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

GAYLEE ADELL
CALIF PUBLIC UTILITIES COMMISSION
UTILITY & PAYPHONE ENFORCEMENT
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814