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Decision 00-03-020 March 2, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer.	Rulemaking 97-08-001 (Filed August 1, 1997)
Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer.	Investigation 97-08-002 (Filed August 1, 1997)

FINAL OPINION ON RULES DESIGNED TO DETER SLAMMING, CRAMMING, AND SLIDING

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FINAL OPINION ON RULES DESIGNED TO DETER SLAMMING, CRAMMING, AND SLIDING

1. Summary

The Commission opened this proceeding to determine if the Commission could better protect consumers against the unauthorized changing of their telephone provider while still making it easy for customers to exercise their choice so as to enhance vigorous competition. This decision increases protection of California consumers by prohibiting local exchange companies from disconnecting local service for nonpayment of long distance charges. In this proceeding, we found that our policy allowing such disconnections may have created an inaccurate perception among consumers that they must pay all charges on their bill, even unauthorized charges, or risk losing their local service. This decision is intended to dispel that perception.

This decision also discusses the Federal Communications Commission's advisory guidelines and California's telephone corporations that bill for third parties. While we leave the corporations free to modify these guidelines to better meet their particular customers' needs, the topics in these guidelines represent consumer protection issues which we expect California billing telephone companies to address.

In reviewing our rules applicable to interexchange carriers and other telecommunications service providers, we have made several minor rule changes needed to better identify the carriers and providers. On the whole, however, the proceeding showed that aggressive enforcement of existing rules against carriers and providers that are violating existing rules would most benefit consumers.

Our assessment of whether consumers are being served by their carrier of choice has shown that while the rate of transfer disputes filed by consumers has generally decreased, there is a troublingly higher rate of disputes among business and residential customers whose language preference is other than English as compared to English-speaking groups. To combat this difference, we require local exchange carriers to implement a consumer education plan through community-based organizations.

To provide context for our actions, we begin with a summary of the consumer perspectives we have heard, then outline the procedural history of this proceeding, and finally detail our specific directives on unauthorized billing (cramming), unauthorized customer transfer (slamming), and the use of dated transfer authorizations (sliding).

2. Consumer Perspective

The Commission's constitutional, statutory, and policy directives all accord consumer protection the highest priority. On the issues of unauthorized transfer and billing, attaining the objective of consumer protection requires an understanding of the impact that these unscrupulous practices have on consumers.

Certainly, being served by an interexchange carrier other than the carrier of choice can result in the consumer paying higher rates. In the comments in this docket and others, however, we have learned that consumers' dissatisfaction goes beyond just financial loss. Consumers abhor being removed from their carrier of choice and being forced to take service from another carrier. For example, a customer testified against a carrier accused of slamming that he would never switch from his carrier of choice because many years ago an international operator for this carrier had been instrumental in locating a family member in a country disrupted by war. In another docket, a representative of

Hispanic customers explained that these customers are more offended by the lack of respect slamming shows than by the financial loss it may impose. Thus, consumer protection requires consideration of more than just the financial issues.

Consumers have also presented the Commission with a well-harmonized chorus of complaints about the time and effort involved in detecting and correcting unauthorized billing. Consumers have difficulty in deciphering the abbreviated and often cryptic information presented on their bills which does not clearly identify either the product or the provider. When consumers are certain that they have been billed for unauthorized charges, making corrections requires an odyssey of confusing voice mail menus, alternative phone numbers to call, unreturned calls, and endless loops of "musak" while on terminal "hold." Consumers are deeply frustrated and annoyed by the time and aggravation necessary to correct unauthorized charges. Their annoyance and frustration escalates when, after having invested the time and effort necessary to gain access to a carrier representative and being assured that the charge has been reversed, the unauthorized charge tauntingly reappears on the next bill. We have also heard consumers state on more than one occasion that they have paid exorbitant and unauthorized charges of up to $900 because they believe that they must pay all billed amounts or risk being disconnected from local service.

Adequately protecting consumers requires that we address these issues. As discussed below, the Legislature adopted new laws that imposed duties on parties to billing agreements and gave the Commission enhanced jurisdiction to impose further duties and sanctions, where necessary. We intend to use our extant jurisdiction and new authority to further protect consumers.

3. Procedural Background

3.1. Prehearing Conference Through Oral Argument

The assigned Commissioner and assigned Administrative Law Judge held a prehearing conference on September 10, 1997. Following the PHC, they issued a comprehensive ruling which:

- invited parties, particularly consumer advocacy groups, to provide information on whether customers are being served by their carrier of choice,
- set out a plan to assess current industry practice on obtaining customer authorizations,
- sought input from the parties on the extent of inaccurate and fraudulent charges in bills and requested comment on proposals to diminish inaccurate and fraudulent billing, and
- stated their intention to consider prohibiting local exchange carriers from disconnecting customers' local service for nonpayment of long distance charges.

To evaluate these issues, the parties filed written comments and responses to other parties' comments. Following the written submissions, Commission Staff convened a workshop to informally address the issues.

To obtain detailed information on carrier compliance with the statutory requirement for independent third party verification of customer transfers, the Commission issued Decision (D.) 98-02-009 which required all carriers to respond to a detailed survey on their verification practices.

On July 3, 1998, the assigned Commissioner issued a ruling which distributed "Workshop and Third Party Compliance Survey Report and Staff Recommendations to the Assigned Commissioner on Unauthorized Transfer of Service and Billing" (Staff Report) which summarized the March 30, 1998, workshop, contained the results of the third party verification compliance audit, and stated Staff's recommendations.

In response to the assigned Commissioner's ruling, the following parties submitted comments: Office of Ratepayer Advocates (ORA), Cox California Telcom II, L.L.C. dba Cox Communications (Cox), California Small Business Association (CSBA), Telecommunications Resellers Association/California Association of Competitive Telecommunications Companies (Resellers/CALTEL), AT&T Communications of California (AT&T), Pacific Bell, GTE California Incorporated (GTE), The Utility Reform Network (TURN), Telephone Connection/Los Angeles, Inc., MCI Telecommunications Corp. (MCI), and the Greenlining Institute/Latino Issues Forum (Greenlining).

On February 3, 1999, the draft decision of the assigned Administrative Law Judge was mailed to all parties. The parties filed initial and reply comments on the draft decision. Many of the comments addressed the local disconnect issue and included requests for an additional opportunity to be heard on this topic. The resolution of that request, as well as the evidence received, is set out below. To the extent the comments addressed other issues, those comments were addressed through revisions to the draft decision.

On April 7, the parties presented oral argument to the Commission en banc. Parties presenting oral argument were ORA, Resellers/CALTEL, AT&T, Pacific Bell, GTE, TURN, Cox, MCI, Greenlining, Citizens Communications Company (Citizens).

3.2. CALTEL's Request for a Hearing

On April 7, 1999, the parties presented oral argument before all Commissioners. Counsel for CALTEL reiterated their request for evidentiary hearings in this proceeding stating that their evidence would show that there is no connection between the perception among consumers that their local service will be disconnected for nonpayment of disputed long distance charges and slamming and cramming. Counsel for Citizens Communications joined in the request for a hearing and, although disavowing any desire to cross examine the authors of the staff report upon which the decision is based, stated a desire to test the "report as evidence."

On April 13, 1999, the assigned Administrative Law Judge issued her "Ruling Setting Additional Opportunity to be Heard and Present Evidence." The ruling allowed parties to "file and serve all additional evidence, including legal argument and factual assertions in the form of declarations." Parties were also granted an opportunity to file and serve responses to the evidence.

On May 5, 1999, CALTEL filed its Motion of the California Association of Competitive Telecommunications Companies and the Telecommunications Resellers Association for a Prehearing Conference and Hearing. In the motion, CALTEL contended that the opportunity to make written submissions, as provided in the ALJ ruling, did not constitute the hearing required by California Trucking Assoc. v. PUC, 19 Cal. 3d 240 (1977).

Pursuant to the ALJ's ruling, other parties filed their written comments and evidentiary declarations on May 14, 1999, and responses on May 28, 1999. CALTEL made no such filings.

On May 20, 1999, GTE-California, MCI and AT&T, and Citizens Telecommunications Companies filed their responses to CALTEL's motion which generally supported the request.

ORA and TURN also filed responses to CALTEL's motion. TURN noted that the Commission need only hold hearings if the parties bring disputed facts to the Commission's attention, and the Commission deemed those facts to be material. TURN stated that no such facts exist in this proceeding because the Commission's justification for allowing local exchange carriers to disconnect local service for nonpayment of long distance was to enhance the revenue those carriers would obtain from billing and collection contracts with long distance carriers. Under then-existing ratemaking practices, the increased revenue would be used to offset cost increases that ratepayers would otherwise pay. TURN argued that under current ratemaking practices such revenue is no longer credited towards costs ratepayers would otherwise bear and consequently the objective of the disconnect policy is no longer being met. TURN concluded that these facts are not in dispute and thus there are no disputed issues of material facts upon which the Commission must hold hearings.

In its response to CALTEL's motion, ORA stated that CALTEL has waited over a year to ask for hearings, and that during that year the parties participated in workshops, filed briefs and comments, and presented oral argument before the Commission. ORA stated that the current record in this proceeding is clear that the facts and circumstances which justified the local disconnect policy no longer exist and that CALTEL has declined to present facts which might provide some new justification for this policy.

The substantive issues raised in the filings are addressed separately in this decision. Here, we address the procedural issues raised by CALTEL's request for a hearing.

We begin with the proposition that to "rescind, alter, or amend" a previous decision, § 1708[1] requires us to afford parties to an earlier proceeding an "opportunity to be heard as provided in the case of complaints." As noted by CALTEL in its motion, the rulings and draft decision in this proceeding disclose a clear intent to alter the outcome of an earlier decision. Specifically, D.85-01-010

[1] Unless otherwise noted, all citations are to the Public Utilities Code.

authorizes local exchange carriers to disconnect local service for nonpayment of long distance charges. The draft decision would prohibit such disconnections. Thus, the Commission must afford parties an opportunity to be heard as in the case of complaints.[2]

The parties were given notice of the Assigned Commissioner's intention to consider altering this policy in a ruling dated February 11, 1998. Over a year later, and after a workshop, lengthy staff report, rounds of written comments, and just before oral argument before the entire Commission, CALTEL requested a hearing. CALTEL stated that it wished to produce evidence for the Commission's consideration. When the ALJ's ruling provided an opportunity to produce such evidence, however, CALTEL rejected it and offered no evidence for the Commission.

To date in this proceeding, the parties have been afforded the opportunity to participate in workshops, file written comments, present oral argument, comment on a draft decision, and to offer sworn testimony of qualified expert witnesses. The only procedural components of an evidentiary hearing process that the parties have not been offered is cross examination of witnesses before a Commissioner or ALJ. Thus, CALTEL's motion appears to contend that it has an absolute right to cross examine witnesses before a Commissioner or Administrative Law Judge pursuant to California Trucking Assoc. v. PUC, 19 Cal. 3d. 240 (1977). The decision and the statutes, upon which it is based, do not create such an absolute right.

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[2] Although most active parties to the proceeding which led to D.85-01-010 are also parties to this proceeding, all received notice of the Commission's intention to modify the outcome of the earlier decision and were extended an opportunity to be heard as required by § 1708.

When the Commission considers changing a previous decision, it must allow parties to that decision a hearing as in the case of complaints. Complainants, however, have no absolute right to an evidentiary hearing at all, much less the particular type of hearing procedure CALTEL appears to desire here:

> Applicant contends that due process was denied because the complaint was dismissed without an evidentiary hearing. If the Applicant were correct, there would be no provision in the law for demurrers, summary judgments, or dismissals prior to trial or an evidentiary hearing. Complaints, of course, may be dismissed not only by the courts, but by this Commission when a complainant fails to establish the facts, applicable law, and jurisdiction justifying a hearing. (See Rule 56, and section 1701.) A hearing can be justified if the matters proven are understood, if there is a sufficient and comprehensible indication that the allegations are based on fact, not mere conclusory accusations, and if the allegations are sustainable under some theory of law. When those conditions are not met, a hearing is wasteful of the resources of the parties and the decisionmaker, and therefore not required. California Alliance for Utility Safety and Education, v. San Diego Gas & Electric Co., D.97-08-072, 1997 Cal. PUC LEXIS 696, *7-*8.

In this proceeding, CALTEL has failed to justify the expenditure of the parties' and the Commission's resources for cross examination before a Commissioner or ALJ. CALTEL has completely failed in its obligation to present evidence which would support holding cross examination after the workshop, staff report, voluminous filed comments, and oral argument before the Commission. In addition to the earlier opportunities to be heard, CALTEL, at its request, was presented with another opportunity to present evidence to the

Commission. CALTEL ignored this opportunity and presented no evidence whatsoever, let alone evidence of a material disputed fact.[3]

Moreover, the purpose of evidentiary hearings is to resolve disputed facts. Here, no such facts are in dispute. Our decision to end local disconnect for third party long distance charges is not based solely or even principally on whether or not slamming or cramming depends on customers' perceptions of losing service. Even if we accepted CALTEL's contention that there is no connection, such a view would have no bearing on the simple fact that the justification for the local disconnect rule has expired. Thus, we see no requirement for additional hearing procedure either under the statute or as a matter of common sense. In this instance, additional process would be wasteful of the parties' and the Commission's resources. CALTEL's request for a Prehearing Conference and Hearing is therefore denied.

4. Recent California Legislation

4.1. Unauthorized Customer Transfer (Slamming)

Assembly Bill (AB) 284 (Stats. 1998, Ch. 672) amends § 2889.5 to require telephone corporations switching a subscriber's residential telephone service provider to send the subscriber a clear and legible notice of the change of presubscribed carrier and provide the subscriber with the customer service telephone number the subscriber may call if the subscriber did not authorize the change. The subscriber notice must be sent by United States Postal Service within 14 days of the switch.

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[3] We note that CALTEL and its counsel are experienced and active participants in Commission proceedings, and are well aware of the Commission's procedural rules and applicable statutes.

AB 284 further amends § 2889.5 to address subscriber liability in cases of unauthorized service order switches or slams. AB 284 makes telephone corporations that violate the verification procedures of § 2889.5 liable to the subscriber for any charges the subscriber paid in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service never changed (referred to here as "overcharge").[4]

Senate Bill (SB) 405 (Stats. 1998, Ch.663) effectively codifies D.97-06-096 by requiring that prior to a telephone company exiting the business of providing interexchange service to all or an entire class of its customers by transferring the customers to another carrier, the telephone company must provide the affected customers with 30-days written notice of the proposed transfer and must effectuate the transfer without charge to the customer. The notice must contain a straightforward description of the proposed transfer, it must notify the customer of all applicable rates, terms, and conditions of the new service, it must inform the customer of the right to transfer to another carrier, and it must provide the customer with a toll-free customer service number the customer can contact with questions.

4.2. Unauthorized Billing ("Cramming")

Assembly Bill 2142 (Stats. 1998, Ch. 1036) and SB 378 (Stats. 1998, Ch. 1041) add §§ 2889.9 and 2890, respectively. These bills, which the legislation instructs are to be read together, were passed to deter cramming and to clarify

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[4] While AB 1096 (Stats. 1998, Ch. 671), which made telephone corporations that violated verification procedures liable to the customer for a 10% overcharge penalty, was signed into law, because AB 284, which amended the same code section, was signed into law after AB 1096, the provisions of AB 1096 were "chaptered out" and will not take effect.

the rights and remedies available to California consumers with regard to telephone billing disputes.

4.2.1. Billing Rules and Restrictions

Until the year 2001, SB 378 permits only "communications-related" goods and services to be charged on a telephone bill, although it allows the Commission to permit Billing Telephone Companies[5] to include charges for Commission-specified "non-communications-related" goods and services on a separate bill within the telephone bill envelope. After January 1, 2001, any product or service can be billed on the telephone bill unless the Commission takes action to restrict such billing. The requirements of SB 378 apply to both communications-related goods and services charged on the telephone bill and noncommunications-related goods and services charged on a separate bill included in the telephone bill envelope.

SB 378 requires telephone bills and bills included in the same envelope as the telephone bill to contain only <u>subscriber-authorized</u> charges. SB 378 establishes a rebuttable presumption that unverified charges are not authorized and that the subscriber is not responsible for the charges. The legislation provides an exception to the verification requirement in the case of direct dialed telephone services where evidence that the call was dialed is prima facie evidence of authorization of nonrecurring charges resulting from the call.

SB 378 sets rules for both the billing telephone company and the person, corporation, and billing agent that bill for a product or service on the

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[5] This is the new statutory term that refers to those companies that provide third party billing. Currently, only incumbent local exchange carriers provide such service but this fact may change in the future; hence, the more inclusive term of Billing Telephone Companies.

telephone bill or separate bill within the telephone bill envelope. SB 378 requires each person, corporation, or billing agent that charges for a product or service on a telephone bill or separate bill within the telephone bill envelope to do all of the following: (1) ensure that there is a clear and concise description of the product or service on the telephone 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 dispute procedures; (4) provide the telephone number at the Commission where a consumer may register a complaint; (5) establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about the charges billed; (6) provide a means for expeditiously resolving subscriber disputes of charges that were not authorized; and (7) resolve all billing disputes within 30 days of receipt of the dispute. A billing telephone company may not bill for a person, corporation, or billing agent unless the entity has complied with these requirements. The billing telephone company must also use a separate billing section for each person, corporation, or billing agent that generates a charge on the subscriber's telephone bill.

4.2.2. Solicitation Requirements

SB 378 and AB 2142 also contain requirements regarding solicitation of subscriber authorization for the purchase of products and services billed on the telephone bill or on a separate bill within the telephone bill envelope. SB 378 provides that where subscriber authorization for the purchase of a product or service is obtained by a written order, such order cannot be used as an entry form for a sweepstakes or contest. The written order must be a separate document from all solicitation materials, must explain the nature of the transaction, must be in the same language as the solicitation, must be unambiguous and legible, and must be in a minimum 10-point type.

AB 2142 prohibits a person or corporation from misrepresenting its association or affiliation with another telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase the person's or corporation's product or service and have it billed on the subscriber's telephone bill.

4.2.3. Commission Jurisdiction and Enforcement

SB 378 recognizes the Commission's authority to permit local telephone service disconnection for nonpayment of charges owed to another service provider but limits that permissive authority to charges (1) relating to subscriber's basic local service, (2) intra local access and transport area (LATA) and interLATA service, and (3) international service. The Commission is not required to allow such disconnections but "may" do so only for the enumerated types of charges.

AB 2142 applies penal provisions, commencing with § 2100, to public utilities subject to §§ 2889.9 and 2890. In addition, AB 2142 expands the Commission's jurisdiction and permits the Commission to enforce §§ 2102 to 2111 and 2114 against violators of the provisions of §§ 2889.9 and 2890 as if the violators were public utilities. AB 2142 further permits the Commission to order a Billing Telephone Company to terminate billing and collection services to violators of §§ 2889.9 and 2890 or persons, corporations or billing agents that fail to respond to Commission staff requests for information.

4.2.4. Commission Implementation of SB 378 and AB 2142

Effective January 1, 1999, AB 2142, codified as § 2889.9, gives the Commission limited jurisdiction over billing agents and companies that provide products or services charged on subscribers' telephone bills. That same section requires the Commission to establish rules for each billing entity to provide to the Commission reports of consumer complaints. The adopted rules are set out in Attachment B and require each telephone company that provides billing services to third parties and billing agents to maintain consumer complaint records and to submit those records to the Commission on a quarterly basis.

4.2.5. New Responsibilities of Billing Telephone Companies

The Legislature has also recognized the key role of Billing Telephone Companies and imposes additional mandatory duties requiring them to bill only for charges that include a clear and concise description of the product or service, a process for disputing the charge, and a toll-free telephone number at which the provider maintains sufficient staff to respond to disputes.

New § 2890 requires the Billing Telephone Companies to ensure that these standards are being met. We expect the Billing Telephone Companies to monitor compliance with these standards and to take prompt action to terminate the billing contract where any billing customer fails to meet these requirements.

To the extent these new responsibilities impose costs upon the Billing Telephone Companies, such costs should be either absorbed by the Billing Telephone Companies or passed on to those service providers that purchase billing services.

4.2.6. Commission Authority over Billing Agents[6]

The Legislature also granted the Commission authority to impose its penalty provisions against billing agents that violate §§ 2889.9 and 2890. In addition to the requirements discussed above regarding authorized charges, consumer dispute resolution processes, and complaint tracking, all billing agents must respond to Commission staff requests for information or be subject to immediate termination of their billing rights through California Billing Telephone Companies. The Commission is also granted broad authority to "adopt rules, regulations, and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of [the statutes]."

In D.99-08-017, the Commission stated its intent to fully utilize this new authority to combat unauthorized charges in California telephone bills. In D. 99-10-048, the Commission used its new authority and directed all California Billing Telephone Companies to cease providing billing services to two billing agents that had failed to comply with a Commission directive.

5. Issues Not Addressed by 1998 Legislation

The 1998 California legislation addresses nearly all of the recommendations made by Staff. In the Workshop Report, Staff had recommended the Commission adopt rules requiring that (1) written authorization for billed charges be on a document separate from any advertising or inducements, (2) all charges be authorized either in writing or verbally, and

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[6] Both §§ 2889.9 and 2890 define "billing agent" as a "clearinghouse or billing aggregator." The Subscriber Complaint Reporting Rules set out in Attachment B clarify the statutory definition and define "Billing Agent" as "any entity which provides billing service for service providers directly or indirectly through a billing telephone corporation."

(3) LECs adopt performance standards for their billing customers which require authorization and penalize excessive consumer complaints.

The new § 2890(c) requires that any written authorization be in a separate document from solicitation materials, and § 2890(b) requires that all charges billed must be authorized. Thus, Staff's first two recommendations have been adopted by the Legislature.

5.1. "Best Practices" Guidelines

The role of the local exchange carrier in setting standards for access to the telephone bill, however, has not been addressed by the Legislature. The Federal Communications Commission (FCC) encouraged local exchange carriers to take on this topic and develop voluntary guidelines that comprehensively address the issue of unauthorized billing.[7] The resulting guidelines, which were adopted by a committee comprised of local exchange carrier representatives, cover customer authorization and also set out recommendations for local exchange carriers to follow in:

- screening products and services,
- inserting special contract provisions for dealing with billing agents, and
- adopting complaint level thresholds at which the local exchange carrier may take action including terminating the billing contract.

We find the FCC guidelines to be fully consistent with Staff's recommendations. A complete set of the Guidelines is attached to this decision as Attachment A. While we recognize that our Billing Telephone Companies

[7] Federal Communications Commission, "Anti-Cramming Best Practices Guidelines," (July 22, 1998).

currently have in place specifications on many of the topics included in the report, we agree with the FCC that a comprehensive set of measures is needed to best protect the public and that the role of the Billing Telephone Companies is critical. The guidelines also address matters on which SB 378 and AB 2142 are silent, especially requirements for billing contract provisions, such as screening of products. (See Section I of the guidelines.)

5.2. Parties' Comments on the Draft Decision

In the Draft Decision, the ALJ proposed to direct the Billing Telephone Companies to address the topics included in the guidelines and either adopt the guidelines or demonstrate that they have better consumer protections in place. In this way, the guidelines would become the mandatory minimum level of consumer protection.

In their comments on this proposal, several parties objected to the Commission turning voluntary guidelines into mandatory minimum standards. The small LECs pointed out that these are not rules, per se, but rather a compilation of practices employed by certain large LECs to prevent cramming, and that the FCC has not formally approved these guidelines.

Although we find that a comprehensive review of Billing Telephone Companies' policies for third party billing is necessary, we do not wish to discourage the industry from creating compilations of best practices on a voluntary basis. Adopting as mandatory a voluntary set of guidelines may have this undesirable effect. Nevertheless, we wish to ensure that the Billing Telephone Companies have thoroughly considered each of these practices and made a determination of how best to protect their end user customers. Therefore, we order all Billing Telephone Companies to file a report in 45 days indicating on a topic-by-topic basis that they currently have in place or will put in place a directive that will address each consumer protection provided by the guideline.

6. Billing Telephone Companies and Customer Disputes

Another important role of the Billing Telephone Companies is as a back up to the product or service provider's dispute resolution process. As Staff noted in their Workshop Report:

> The current process for disputing a charge would appear to be quite favorable to the consumer. By simply calling the LEC and stating that all attempts to resolve the cramming dispute with the service provider have failed, the LEC will remove the charge. The incentive is for the LEC to maintain their good standing with the customer, and can do so on the cheap because the LEC [is reimbursed] from the actual service provider for any charge-reversals, which may also be subject to an additional inquiry charge.

The billing services contract is the source of this process of allowing customers that fail to obtain satisfaction from the product or service provider to turn to the Billing Telephone Companies (local exchange carrier). Assuming LECs implement the process as described, it appears to provide consumers a relatively quick and inexpensive means of resolving these disputes. Unfortunately, too few consumers are aware of and use this process. Therefore, we direct the Billing Telephone Companies to undertake a consumer education effort to inform consumers of this option and file a proposed consumer education plan no later 45 days after the effective date of this order. Such a plan shall include the use of bill inserts and shall have particular components directed at low-income and non-English-speaking households, including the availability of multi-lingual bills. The specifics of the Consumer Education Plan are set out in Attachment C.

7. Local Disconnect for Failure to Pay Long Distance Charges

7.1. Background and Draft Decision

In certain circumstances, LECs will disconnect customers' local telephone service for nonpayment of other charges. In the "Access Charges" dockets, A. 83-01-022, I.83-04-02 and C.83-11-07, the Commission authorized the rates that LECs could charge interexchange carriers for a wide variety of access charges, including billing and collection services. Among the features the LECs were authorized to offer with the billing and collection service was termination of local service for nonpayment of interexchange charges:

> As we analyze the various challenges to Pacific's billing and collection tariff, we bear in mind the policy established in D.83-12-024: that these services should be priced to generate the maximum sustainable contribution toward meeting Pacific's overall costs of service. To the extent that a particular element of these services is available to IECs only through Pacific, it may be unfair to price that service element based on "what the market will bear." There is one particular "service" element, however, to which we shall not apply this consideration of monopoly power. That is the "service" of terminating local service for nonpayment of interLATA charges (which AT&T-C calls "credit management" and MCI calls "dial tone leverage").
>
> We only recently determined that it is lawful for us to authorize Pacific's local service termination procedure. (D.85-01-010, mimeo. at 80-84.) [17 CPUC 2d 6] We gave Pacific that authority in order to enhance the value of its billing and collection services, and to "preserve a portion of the efficiencies of an integrated local and toll network *for the benefit of local subscribers*. (D.83-12-024, mimeo. at 126 (emphasis added).) We should not have permitted Pacific to disconnect customers' local service for nonpayment of IECs' charges merely as a convenience to

> the IECs. Rather, we find that, as a means of limiting the need for local rate increases, it is fair for Pacific to extract substantial revenues in excess of costs for the provision of a Bill Processing Service incorporating the local service termination procedure.
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> Re Pacific Telephone and Telegraph Company, 18 CPUC 2d 133, 213-4 (D.85-06-115).

In a previous decision, the Commission explicitly limited the types of service for which a LEC might terminate local service to "interexchange service." That decision clearly stated that Pacific Bell could not disconnect local service for nonpayment of any other services: "We will not permit Pacific to extend its power to collect bills for an essential public service into the area of general bill collection services." Re Pacific Telephone and Telegraph Company, 13 CPUC2d 331, 395 (D.83-12-024).

In short, the Commission allowed Pacific Bell to enhance the value of its billing and collection services to IECs by authorizing Pacific Bell to disconnect local service for nonpayment of interexchange bills. The revenue generated by the higher priced billing service would be used to lower local service charges to local customers.

With the passage of 15 years, the telecommunications industry has changed dramatically from the early 1980s. Commission-certificated IEC now number nearly 1,000. Consumers have enjoyed the benefits of competition but have also been subject to unauthorized transfer from one service provider to another.

The FCC also recognized this change. The FCC discontinued its practice of allowing LECs to disconnect a customer's local telephone service for non-payment of toll charges in certain cases. As explained by the FCC in its Universal Service Order, FCC 97-157:

"[Local Exchange Carriers] have maintained this special prerogative, although the interstate long distance market and local exchange markets legally have been separated for over a decade, and interstate billing and collection activities have been deregulated since 1986. Because the practice of disconnecting local service for non-payment of toll charges essentially is a vestige of the monopoly era, we find our rule prohibiting that practice will further advance the pro-competitive, deregulatory goals of the 1996 Act." Order at 391.

Specifically, in its Universal Service Order, the FCC decided to prohibit those carriers eligible to receive federal universal service support from disconnecting Lifeline service for non-payment of toll charges. Order at ¶ 390.[8] In doing so, the FCC stated that its decision "should not be construed to affect the ability of the states to implement a rule prohibiting disconnection of local service for non-payment of toll charges for non-Lifeline customers." Id. at n. 998.

In a ruling issued earlier this year, the assigned Commissioner found that the issue of unauthorized billing required that the Commission review its 1983 policy to ensure that it comports with current market conditions and consumers' interests. Accordingly, the parties submitted comments on the continuing need for this authorization.

The parties' comments revealed that all commenting LECs and IECs argued for continuing the policy, while the consumer groups - TURN, Greenlining and ORA - contended that the policy should be changed. Greenlining states that up to half of certain language groups experience abuse by

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[8] In Texas Office of Public Utility Counsel v. FCC, 183 F. 3d 393 (5th Cir, 1999) the Court held that the FCC improperly intruded into intrastate matters reserved to the states in adopting this rule. The Court agreed with the states that adoption of a no disconnect rule is a matter for the states to consider.

telecommunications providers and then face the prospect of local service disconnection for failure to pay these unauthorized charges. CSBA saw both sides of the issue, i.e., protecting consumers from unauthorized charges but also the value of reducing uncollectibles, and adopted a wait and see stance. The comments suggest that most IECs and other service providers find the billing and collection services from the LEC particularly attractive due to their ability to "leverage dialtone" or keep uncollectibles low by disconnecting local service for nonpayment of other services. Carriers and service providers may disconnect their own services at any time for non-payment of charges.

We remain concerned that this policy has set the stage for unauthorized billing. We have repeatedly heard consumers' state their belief they fear disconnection for nonpayment, even if the nonpayment is of unauthorized charges. However, several parties pointed out that this policy benefits all consumers by encouraging customers to pay their bill, which keeps down the amount of debt which cannot be collected. Some parties even contend that it is statutorily mandated, citing § 779.2(b).

Four factors weigh heavily in support of abandoning this policy. First, the Commission adopted this commercially unusual practice, allowing one service provider to cease service for nonpayment to another, to allow the LECs to enhance their billing service revenue, which acted as an offset to local service rates. This rationale is no longer applicable. In fact, as the FCC correctly noted, given local exchange competition, this policy is anti-competitive.

Second, the phenomena of slamming and cramming can only flourish where consumers pay their bills, even unauthorized bills. This policy furthers the interests of unscrupulous carriers.

Third, the carriers' comments state that all consumers benefit from the low uncollectible rate enjoyed by carriers that bill through the LECs. While the carriers may be correct that this policy simply allows them to better collect their legitimate charges, this policy also helps carriers to collect erroneous charges.

Fourth, because the FCC's rule prohibiting Lifeline service disconnect for non-payment of toll service has been vacated, low-income customers are no longer protected from local service disconnect.

7.2. Additional Evidence Presented on the Local Disconnect Issue

At oral argument, the parties requested an additional opportunity to present evidence on the local disconnect issue. Pursuant to an ALJ ruling, the parties conducted limited discovery and filed written declarations and legal briefs.

7.2.1. Summary of Each Party's Evidence

MCI presented the declaration of its Senior Manager for Revenue Assurance, who stated that local disconnect[9] benefits customers in four ways: (1) it provides customers with only one phone bill because long distance companies will prefer to bill through the LEC, (2) customers can dispute charges through one call to the LEC, and (3) long distance companies' costs are kept low because they can rely on the LEC billing services rather than create their own, and (4) the local disconnect policy keeps down the cost of uncollectibles which would have to be passed on to other customers. MCI conducted an analysis of its bad debt in the Bell Atlantic region and determined that its uncollectibles were 70% higher in states where local disconnect was prohibited. From this

[9] MCI used the term "Full Service Denial" to describe disconnection of local service for nonpayment of long distance.

analysis, MCI forecast that it would experience a similar increase in its uncollectible rate in California.[10]

Pacific Bell presented evidence that vigorous enforcement of existing rules prohibiting slamming and cramming against the fairly small number of carriers that are responsible for the majority of complaints would reduce these problems more than eliminating the local disconnect policy. Pacific Bell explained its disconnect policy and contended that it does not disconnect local service for nonpayment of long distance charges where the customer disputes the charges. Moreover, Pacific Bell stated that 23% of its residential customers are Lifeline customers, and that the FCC prohibits disconnection of local service for nonpayment of long distance charges to these customers.[11] Lifeline customers also comprise 75% of customers that prefer to do business with Pacific Bell in Spanish, and 43% of customers that prefer to do business in an Asian language.

Citizens Communications presented evidence that it does not disconnect local service where the customer disputes the charges. Citizens also allows customers to make extended payments over a period of time, and gives required notice prior to disconnection. Citizens also stated that its current bills do not separately state local and long distance charges and to do so would cost several thousand dollars. It also contended that the ability to disconnect local

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[10] MCI requested that its financial analysis be held under seal. No party opposed the request. Due to the lack of opposition, we will grant this request. The percentage increase was originally included in the amounts to be held under seal but at the request of the ALJ, MCI agreed to allow public release of this amount, but not the underlying bad debt ratios upon which it is based.

[11] The U.S. Court of Appeals for the Fifth Circuit subsequently vacated this FCC decision, see note. 8.

service for nonpayment of long distance constituted a valuable service to its billing and collections customers.

GTE-California offered evidence that it does not disconnect local service for nonpayment of disputed charges, nor does it disconnect service to Lifeline customers.

Greenlining presented evidence that the states of Idaho, Montana, Delaware, Iowa, Arizona, Washington, Oregon, New York and South Dakota all had in place rules or statutes which prohibited the disconnection of local service for nonpayment of long distance. Greenlining argued that prohibiting local disconnect would promote competition, the local economy and continued telephone service to vulnerable and low-income consumers.

Greenlining also interviewed clients of a community-based organization who were attending a class in the Mission District of San Francisco to ascertain whether any of them had any problems with their long distance service in relation to slamming, unauthorized charges and/or cramming that negatively affected their local service. In an hour and half, Greenlining spoke to 13 clients in two classrooms. Out of the 13 clients contacted, four reported such problems. Greenlining included signed sworn declarations from three persons. For privacy reasons, the customers will be referred to by initials, rather than full name.

Customer MM stated that she operated a small business out of her home and had accrued excessive long distance charges. When she asked the local telephone company if she could discontinue long distance service and pay only for local service, she was told "no." Subsequently, she lost both local and long distance service.

Customer CL's relative made $1,400 worth of long distance calls on her phone. CL moved soon thereafter and did not receive her closing bill containing the charges. When CL attempted to have local service connected in her new home, she was denied such service until she paid the full $1,400, plus interest. After being without any phone service for nine months, she paid the amount demanded and now receives local service only. To obtain long distance or toll services she will need to pay a $840 deposit.

Customer ACD changed from MCI to another long distance provider. Nevertheless, MCI billed her for $2.50 in a subsequent month, which she paid because it was such a small amount. MCI billed her the following month for $23.00, which she did not pay but called MCI and was told that the charge was related to her "local telephone number." Pacific Bell assures her that all services have been cancelled from MCI but MCI still contends that she owes $58. Customer ACD is worried about continuing to receive local telephone service.

Sprint submitted evidence that when its charges are billed through the LEC, Sprint purchases "inquiry" service from the carrier, which means that the carrier investigates disputed charges and awards adjustments when needed. The adjusted amount is "recoursed" to Sprint, and is written off as bad debt unless Sprint determines that the dispute was invalid, in which case it directly, i.e., not through the LEC, bills the customer. Slamming complaints are handled differently, in accord with FCC rules. Where Sprint bills customers directly, nonpaying customers are subject only to losing their access to Sprint's services, which may include local service. Sprint also conducted an analysis of its bad debt in states where local service disconnect is allowed as compared to states where it is not. Sprint determined that its bad debt is 23% higher in states that do not allow local service disconnect.

AT&T stated that the local disconnect policy serves the public interest by holding down costs (uncollectibles) and therefore prices. This policy does not harm consumers, AT&T contended, because Lifeline customers may not have local service disconnected for nonpayment of toll pursuant to FCC rule, and no customer is disconnected for disputed charges. Thus, AT&T concludes, only non-Lifeline customers that refuse to pay undisputed charges are affected by the current rule. AT&T advocated increased customer education about the dispute process as the best means to combat slamming and cramming.[12]

Roseville Telephone Company presented evidence that it does not disconnect customers while a dispute is pending. It also contended that to the extent the local disconnect rule was abandoned for LECs the same rules should be applied to competitive local carriers.

Nextlink California filed reply comments addressing TURN's comments challenging the Draft Decision's exception for competitive carriers that provide both local and long distance services. Nextlink stated that competitive carriers work very hard to obtain and retain customers and as a consequence would only disconnect service with good cause. Any such customers always have the option of returning to the local exchange carrier for local service. Nextlink contended that notwithstanding the Commission's universal service goals, competitive carriers should not be required to continue providing local service to a customer who refuses to pay undisputed long distance charges.

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[12] The admitted need for customer education is addressed elsewhere in this decision. AT&T's recommendation is highly informative because it carries an implicit assumption that customers do not know about their rights to dispute charges. These customers may well fear the loss of local service and therefore pay unauthorized charges. AT&T's contention of no harm to customers assumes perfectly educated consumers, an assumption even AT&T admits is not accurate.

In its presentation, TURN contended that ending the outmoded practice of allowing local carriers to leverage dial tone as a collection device would also promote the Commission's universal service goals. TURN stated that local telephone service is necessary for participation in contemporary society, so necessary that the Commission has taken the extraordinary step of ensuring that it is available to everyone at affordable prices. Allowing disconnection of local service for nonpayment of long distance service runs counter to this policy.

TURN contended that the process for disputing charges through the local exchange carrier is not as favorable to the customers as the local exchange carriers suggest because their tariffs allow them to determine whether any disputed charge is "warranted."

TURN pointed out that the dispute process is often a frustrating and time-consuming experience for customers, so that customers with legitimate disputes of unauthorized charges, when coupled with the threat of losing local service, will simply pay the charges rather than endure a lengthy process.

TURN also argued that the long distance carriers had not substantiated their claims that changing the local disconnect policy would cause an increase in uncollectibles. TURN presented evidence in the form of a mathematical analysis by an expert economist of the workpapers underlying Sprint's and MCI's contention that uncollectibles would increase.[13] This analysis

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[13] TURN submitted a motion to hold portions of its Supplemental Reply Comments under seal. Those portions included information obtained from MCI and Sprint, both of which supported the motion. MCI and Sprint stated that the information met the Commission's confidentiality standards and was valuable business information. No party opposed the motion. We will grant it.

concluded that Sprint's data was "subject to numerous data anomalies, inconsistencies, and misclassifications and its method is undocumented and unverifiable" and "do not substantiate the assertion that there is a 23% difference in the bad debt ratios of [local disconnect] versus non-[local disconnect] states." Similarly, MCI's 70% difference "is also suspect" because it is "based only on partial 1998 data, and on an inconsistent time period for the [local disconnect] and non-[local disconnect] states in the Bell Atlantic South region."

Moreover, TURN disputed MCI's and Sprint's assertion that the local disconnect was vital to long distance carriers by pointing out that AT&T directly bills 85% of its customers and despite lacking the local disconnect threat, has remained competitive and profitable.

TURN concluded that to the extent uncollectibles increase, this should be seen as restoring a normal cost of business to the long distance carriers.

ORA submitted copies of letters from consumers who either believed that their service would be disconnected if they disputed unauthorized charges or whose service was disconnected despite disputed charges. One such letter states "the operator said you have to pay or your telephone will be disconnected."

ORA also took issue with Pacific Bell's assertion that a limited number of long distance companies are responsible for most slamming complaints. ORA pointed out that local exchange carriers maintain complaint records based on codes (Carrier Identification Code or CIC). Some, but not all, long distance carriers have a unique code. Some long distance carriers which contract for service on another carrier's system and simply resell the service do not have a CIC but rely on their underlying carrier's CIC. Due to this fact, ORA contends, and until a unique numbering system is in place, the local exchange carriers, such as Pacific Bell, cannot report slamming rates on a carrier-by-carrier basis.

7.2.2. Discussion of Additional Evidence

Under the guise of additional evidence, the parties have presented argument but few new facts for the record. Many parties discussed the value of the dispute process to customers who are billed for unauthorized charges. As noted in other parts of this decision, the process indeed appears quite favorable to customers; <u>however</u>, many customers are unaware of it. To address this, we will retain the customer education plan requirements contained in the earlier drafts of this decision.

MCI and Sprint presented some attempt at quantification of their hypothesized increase in uncollectibles which would occur if this policy were changed. TURN's economist cast serious doubt on the mathematical accuracy of the analysis, and TURN's attorney points out that other states have addressed this precise issue and found that any actual increase in uncollectibles is simply restoring a cost of doing business.[14] Greenlining presented additional evidence from other states which do not allow local service disconnect and which do not appear to be suffering from its absence.

Ending the policy which encourages this belief is our first step towards changing it. Our next step is the customer education plan outlined elsewhere in this decision. Our hope is that when consumers are free of the fear

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[14] We note that the uncollectible reduction justification for local service disconnect could apply to virtually any business, not just long distance service. Credit card companies, for example, might well see a decrease in their uncollectible accounts if allowed to disconnect a customer's local telephone service for nonpayment of credit card debts.

of losing local service, they will no longer feel compelled to pay unauthorized charges.

For these reasons, we abolish our policy of allowing local exchange carriers to disconnect local service for nonpayment of interexchange service charges billed by the local exchange carrier. Local exchange carriers shall file revised tariffs implementing this decision no later than 90 days after the effective date of this order.

7.3. Local Disconnect and Pub. Util. Code § 2890(d)

The Legislature confirmed the Commission's authority over the local disconnect when it adopted § 2890(d). That section reflects the Commission's authority to determine whether a local exchange carrier may disconnect local service for nonpayment of other charges, but limits that permissive authority to specific types of charges:

> The Commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's 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.

In this recently enacted statute, the Legislature recognized the Commission's authority to determine whether local service may be disconnected for nonpayment of certain other charges by using the word "may." Generally, "may" is permissive and connotes discretion. See, e.g., § 14; Business and Professions Code § 19. Thus, this statute allows the Commission to determine whether a local exchange carrier may disconnect local exchange service for nonpayment of any or none of the listed charges. This statute does, however, limit the Commission's discretion to allow disconnection for only those listed charges.

In comments filed prior to the Legislature adopting § 2890(d), some of the parties to this proceeding argued that § 779.2(b) required the Commission to allow local service disconnection. This later-adopted legislation clarifies that the intent of § 779.2 was not to establish a Legislatively-mandated local disconnect policy, but rather to allow the Commission to determine, pursuant to extant authority, whether and on what terms such disconnections could occur.

Section 2890(d) is readily reconcilable with Section 779.2.

Standing alone, Section 779.2(a) would prohibit a telephone corporation from disconnecting the residential service of a customer who fails to pay for services furnished by another provider (i.e., a provider other than the one offering the residential service). Section 779.2(b), however, provides that the prohibition contained in Section 779.2(a) does not apply where a telephone corporation providing intraLATA service also bills for the services provided by an interLATA carrier pursuant to a tariff for billing services on file with the Commission. In that situation, Section 779.2 does not prohibit termination of the residential service provided by the intraLATA company for failure to pay for the service provided by the interLATA carrier.

The later-enacted Section 2890(d), however, provides additional restrictions on the termination of telephone service. Section 2890(d) provides that a subscriber's local telephone service (both residential and non-residential) may be disconnected for nonpayment of charges if and only if (1) the charges are for basic local exchange telephone service, intraLATA long distance telephone service, interLATA long distance service, or international telephone service, <u>and</u>

(2) the Commission permits the disconnection for nonpayment of these charges.[15] Section 2890(d) prohibits disconnection of local service for nonpayment of any other kind of charges.

In sum Section 779.2 prohibits one telephone corporation from terminating residential service for failure to pay another telephone corporation's bill, except under specified circumstances. Section 2890(d), on the other hand, focuses on the kinds of telephone services for whose nonpayment local service may be disconnected with the permission of the Commission. Under Section 779.2(b), standing alone, a telephone corporation could disconnect local residential service for nonpayment of an interLATA carrier's bill (where the long distance service is billed by the resident's local telephone corporation under tariff). However, the two sections must be viewed together, and meaning given to each word in the two statutory provisions. Read together, they provide that local telephone service may be terminated only where the Commission has given permission for termination for nonpayment of one or more of the kinds of telephone services specified in Section 2890(d), and then, in the case of residential service, only where the local telephone company is billing for the interLATA carrier pursuant to a tariff on file with the Commission.

[15] Section 2890(d) does not give telephone corporations an unfettered right to disconnect for nonpayment of any of the four specified kinds of service. If it did, the section would have provided that "a subscriber's local telephone service may only be disconnected for nonpayment of . . ." or "The commission must permit a subscriber's local telephone service to be disconnected for nonpayment of . . ." Instead, the section provides that "The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of . . ." In short, the section sets an outer limit on what the Commission may permit.

7.4. Competitive Local Carriers and Local Disconnect

Cox California Telcom, LCC, dba Cox Communications (Cox) raises the issue of competitive local carriers that may be providing both local and long distance service. Nextlink agreed with Cox that competitive local carriers should not be prohibited from disconnecting local service for nonpayment of long distance. Nextlink distinguishes the case of competitive local carriers disconnecting local service for nonpayment of long distance service from that of an incumbent local exchange carrier disconnecting service for nonpayment of a third party long distance provider. In the case of disconnection by the competitive carrier, the customer has the option of obtaining local service from the incumbent local exchange carrier.

TURN contends that allowing a vertically integrated competitive carrier to leverage dialtone is also anticompetitive because it benefits only those carriers that provide both local and long distance services.

Resolving this matter requires that we return to the basic facts of the local disconnect rule. In that case, local service was used as a means to coerce payment of long distance charges to a third party, which were billed through the local bill. In the case of competitive providers, no third party is involved and neither is an incumbent service provider. A disconnected customer of a competitive provider may return to an incumbent carrier and receive local service. There is no customer fear of a dead phone. Moreover, one carrier is providing both services, not using its local service to enhance the value of its billing and collections service to a third party.

However, there are reasons for prohibiting disconnection of local service for nonpayment of long distance service. As the Staff Report recognized such a prohibition policy would maximize customers' ability to retain local service in light of financial difficulties with non-local service charges. (See Staff Report,

p. 41.) A uniform and competitively neutral policy on disconnect prohibition would also place LECs' and CLCs' billing operations on the same footing as that of carriers that bill through a LEC. At this time, however, we will not require competitive local carriers to continue to provide local service where the customer is in arrears for any long distance service (including interLATA, intraLATA, and international toll services) provided by that carrier.[16] While we are wary of the potential for "dial tone leveraging" by competitive local carriers, we believe that key to short-circuiting any such "leveraging" is a readily available alternative local service provider. For the reasons raised in the Staff Report, we may revisit the policy to prohibit *all* carriers from disconnecting local service at another time. We do, however, clarify and emphasize that the competitive local carrier may disconnect only for nonpayment of long distance telecommunications services it provides directly or through an affiliate. This authority does not allow them to disconnect local service for nonpayment of (1) charges for non-communications related services, (2) any billing performed on behalf of a third party, or (3) any assignments or other transfers of rights to payment from third parties.

Incumbent local exchange carriers that also provide long distance service present different questions. At this point in time, we find that the local exchange market is not sufficiently competitive to allow incumbent local exchange carriers that also provide interexchange service to disconnect local service for nonpayment of interexchange charges.

[16] This conclusion also applies to competitive local carriers that provide both local and long distance service but bill through third party billing services.

8. Carrier Identification in Bills

Identifying the carrier that is billing or serving a customer is essential to evaluating claims of unauthorized billing or customer transfer. Customers are billed based on corporate names that may be abbreviations or fictitious business names. When the customer calls to complain to the Commission staff, this sketchy information is insufficient to identify a particular Commission-certified carrier. Staff proposed that each billing carrier include its Commission-assigned Utility Number (U#) in all bills and printed materials, including advertising.

Several parties, including MCI and GTE contended that Staff's proposal would be too expensive because it would require a California-specific bill and advertising. Pacific Bell agreed that the advertising requirement was unwarranted but supported Staff's recommendation that the U number appear on bills and letters of authorization.

We agree with Staff that the carrier identity is essential for effective consumer complaints and protection. Consumers most often complain when wrongfully billed or when their service has been transferred. Requiring the Utility Number on bills and service transfer documents (letters of authorization) will allow Commission consumer services staff to assist the consumer in resolving the dispute with the correct carrier.

In the comments on the Draft Decision, CALTEL objected to this requirement and contended that it would cause carriers to create expensive California-specific billing systems and transfer procedures. CALTEL also pointed out that the FCC was considering a similar unique identifier.

As an initial matter, we have no objection to relying on an identification system initiated by the FCC so long as it provides customers and our consumer services personnel accurate and readily available identification information. As for the expense of including the Utility Number or other unique identifier, we are not persuaded that conveying the most basic of information to consumers, i.e., the exact identity of the service provider, is an unreasonable burden. As noted elsewhere, through the use of abbreviated names and fictitious business names, consumers may receive little or no useful identity information about their service provider. Absent this most basic information, consumers are simply in no position to accurately determine whether they authorized the charges.

Moreover, we note that the rules we adopt today for tracking consumer complaints require that the local exchange carriers have some means of identifying all service providers for which they bill, directly or indirectly. Thus, the creation of the unique identifier is a necessity; the only remaining question is whether to share this information with consumers.

Our CSD staff also raised the issue of carriers using fictitious business names without registering those names with the Commission. The use of fictitious business names is not prohibited by statute or Commission policy. Nevertheless, when a carrier operates under a name other than the name on the operating certificate, consumers can become confused and may have a difficult time filing a complaint against the proper carrier at the Commission.

In comments on the Second Draft Decision, several parties objected to creating a unique identifier for billing purposes. Sprint, MCI and AT&T point out that numbers convey no useful information to consumers and that most large interexchange carriers bill under their own recognizable name. CALTEL and TRA note that § 2890, effective January 1, 2000, requires that all consumer bills for telecommunications service include the identify of each service provider. CALTEL and TRA conclude that Commission could best serve consumers and carriers by requiring carriers to bill under the name by which they are certificated.

We agree. The actual identity of the service provider is the information that should be readily available to consumers. Therefore, we find that all certificated service providers must bill customers using the name which appears on their Certificate of Public Convenience and Necessity. Any abbreviations must convey enough information to allow the consumer and the Commission staff to identify the carrier.

Requiring billing by certificated name only is consistent with § 2890 and also obviates the need for any registry of fictitious business name as ORA requested.

This requirement, however, does not address service providers that are not certificated by this Commission. For these service providers, we will require that the bill display the name under which the service provider is certificated by the FCC, if applicable, or its legal name, disregarding any fictitious business names. Our objective here is to provide consumers useful information about the identity of the service provider that has billed the consumer.

Each service provider's identity must, however, be unique. This will require that the Billing Telephone Companies coordinate the exact name which appears on the bill.

For these reasons, we will order the Billing Telephone Companies to submit a plan for requiring all service providers which use their billing and collections services to provide a unique identifier based on certificated name or business name, if not certificated, for inclusion in the bill and to tabulate consumer complaint rates on a provider-by-provider basis. Where the service provider is a Commission-certificated carrier, the unique identifier shall be based in the name as it appears on the carrier's Certificate of Public Convenience and Necessity. Where the service provider is not required to be certificated by this Commission, the Billing Telephone Companies and the service provider shall base the identifier on the name under which the service provider does business with consumers and shall maintain a comprehensive list of all such identifiers, which will be provided to staff on a regular basis.

9. Slamming Record-Keeping

Pacific Bell recommends using the Utility Number to clarify the identity of carriers transferring customers. Using electronic messages, interexchange carriers are able to direct local exchange carriers to transfer customers from one interexchange carrier to another. Not all interexchange carriers have obtained a unique code (Carrier Identification Code, CIC) which the local exchange carrier uses to keep track of all the different interexchange carriers. The carriers that do not have a unique code are always resellers who rely on the code of their underlying wholesale carrier. This code is the basis of the local exchange carriers' record keeping of disputed customer transfers. Where a reselling carrier does not have a unique code, the local exchange carrier cannot maintain accurate records about that particular carrier's customer dispute rate. In this way, resellers can shield their dispute rates from the local exchange carrier as well as the Commission.

Two proposals were discussed. The first proposition is to require each and every interexchange carrier to obtain its own CIC. While sounding simple, Pacific Bell stated that requiring every carrier to have a unique CIC "would require the replacement of almost all of Pacific Bell's switches in California and would cost more than we can estimate at this time." Pacific Bell Comments at 8. Assuming that Pacific Bell's seemingly extreme estimate is correct, the proposal is not feasible.

The second proposal is to use the Utility Number to differentiate among all the carriers which do not have CICs. Pacific Bell states that they could implement such a change for between $200,000 and $500,000.

Because complete and accurate records are essential to the Commission enforcement staff discharging their duties, we will order the local exchange carriers to implement this change. Carriers submitting customer transfers will be required to identify themselves by their Utility Number, if they do not have a unique CIC. The local exchange carriers will use this information to maintain customer transfer dispute rates on a carrier-by-carrier basis.[17]

10. Expiration Date for Letters of Agency

One way consumers may validly authorize their transfer to another carrier is by executing a Letter of Agency (LOA). These documents must comply with the requirements for valid authorization found in § 2889.5, which include:

- thoroughly informing the customer of the nature and extent of the service being offered,
- specifically establishing whether the customer intends to make any change in service provider, and explaining any associated charges,
- obtaining the customer's signature on a document which states the changes, and
- furnishing the customer with a copy of the document.

The statutory requirements do not, however, explicitly include a temporal requirement - that is, the duration of the validity of the signed document.

Pacific Bell stated that some interexchange carriers are presenting letters of agency that are months or even years old to transfer customers' local service.

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[17] We are aware that the FCC is considering other proposals of nationally applicable identifiers. Should the FCC adopt such identifiers, we have no objection to the local exchange carriers using the FCC's system so long as customer transfer dispute rates can be tracked on a carrier-by-carrier basis.

Many carriers obtained Commission authority to provide interexchange service well in advance of local service. Pacific Bell seems to be suggesting that some carriers obtain customer authorization to transfer their interexchange service <u>and</u> local service at the same time, despite the carrier not having obtained Commission authorization to provide local service. The carrier then immediately transfers the customer's interexchange service but holds off on transferring the local service. When local service is authorized, which may be several months later, the customer's local service is switched. In this way, a "stale LOA" is used to authorize a transfer of local service.

Pacific Bell proposed that the Commission adopt rules covering the duration of the validity of customer authorizations and the specificity with which the authorizations must be stated. Cox, GTE, ORA, AT&T, and CALTEL filed comments generally agreeing that this sounded like a problem but stating that not enough was known to support adopting new rules. CALTEL noted that any rules proposed by Pacific Bell limiting the effectiveness of transfers of local service should be carefully reviewed because as the incumbent local service provider, Pacific Bell is advantaged by declaring LOAs invalid.

The Commission has previously addressed the issue of the duration of an LOA. In D.97-05-089, the Commission scrutinized a program by which a long distance service provider, CTS, would obtain customers' consent to transfer them back to its service, should they ever be switched away by another carrier. The purpose of CTS' program was to thwart unauthorized transfers away from CTS. Once signed up for this program, a customer had to notify CTS prior to transferring. Many customers did not make this prior notification and authorized some other carrier to provide service. Not having received the required pre-notice from the customer, CTS would then switch the customer back to its service.

The Commission found that this sequence of events failed to meet the statutory requirements because CTS did not "specifically establish whether the customer intends to make a change." D.97-05-089 at 30-1. CTS argued that the authorization occurred when the customer signed up for the program but the Commission rejected that argument and found that CTS violated § 2889.5 with each transfer.

Although not explicitly stated, that decision suggests that the Commission has recognized an implicit requirement in the statute that the customer validly authorize the transfer <u>at the time the transfer takes place</u>. While some time lapse allowance is necessary to implement transfers, those transfers which are delayed for reasons other than administrative feasibility raise serious validity questions.

Pacific Bell recommends that the Commission adopt a rule stating that all LOAs dated more than 90 days previous to presentation to the local exchange carrier are invalid. The statute requires that the carrier specifically establish the customer's intention to switch. Although unstated, certainly the statute can be read to necessarily imply that the customer's intention must co-exist with the signing and submission of the LOA. Such intention can also be assumed to apply during an administratively direct route from the signing to the actual switch.

Now turning to the substance of Pacific Bell's proposal, because the statute appears to require that the customer evidence a present intention to transfer service, we note that 90 days is far removed from the customer's act in signing the document. Ninety days represents up to three billing cycles during which the customer may well have found another carrier or grown sufficiently impatient with the proposed carrier.

In recognition of this seemingly long duration to transfer service, the Draft Decision proposed to require carriers to present service provider change requests to the local exchange carrier within 30 days of execution. In addition to Pacific Bell, ORA, the California Small Business Association and the California Small Business Roundtable supported the 30-day limit set out in the Draft Decision.

Nevertheless, as the parties pointed out in their comments, the record is rather limited on this topic and the staff report does not address it. For this reason, we will adopt Pacific Bell's proposal and require competitive local exchange carriers to process all LOAs and present the resultant service provider change requests to the local exchange carrier within 90 days with one exception discussed below. If not, the carrier requesting the change should obtain the customer's authorization.

In comments on the second draft decision Nextlink and ICG states that 90 days is an unreasonably short period of time in circumstances where a facilities-based carrier must construct facilities. Such construction may require lengthy approval and construction processes. Nextlink and ICG suggested that the Commission allow carriers to enter into written contracts with customers that specify a time period longer than 90 days for transfer of local service.

We agree. Where a written contract between a facilities-based carrier and a customer clearly states that the actual transfer will occur more than 90 days in the future, the local exchange carrier shall honor the transfer request.

CALTEL has stated that the local exchange carriers have experienced difficulties in processing local switch orders. For this reason, presentation to the local exchange carrier, which we will assume will process it efficiently, must be made within 90 days. Competitive local exchange carriers are directed not to submit, and incumbent local exchange carriers are directed not to honor, a service provider change request that is submitted more than 90 days after the customer signed the LOA, with the one exception set out above.

11. Third-Party Verification Compliance Survey

In D.98-02-009, the Commission ordered an audit of all California telephone corporations to ensure industry-wide compliance with the statutory requirement that all residential customer transfers from one long distance carrier to another be verified by an independent third party. The decision included a questionnaire that all interexchange carriers and competitive local carriers were to complete and return to the Commission staff.

Despite a reminder notice, the response rate was unsatisfactory, to say the least:

IEC/CLC Survey Response (as of 5/26/98)

Surveys Completed	287	46.6%
Surveys Incomplete	67	10.9%
Postal Returns	51	8.3%
No Response	212	34.2%

Over one-third of the Commission-certificated carriers that were ordered by a Commission decision to respond to this survey failed to do so!

Due in part to the lack of carrier response to the third-party verification questionnaire, the Commission staff has become aware of the unacceptably high rate of carrier noncompliance with this and other filing requirements. In investigating the cause of the problem, staff has discovered that its list of names and addresses of carriers may be inaccurate and incomplete. To cure this first level of causation, Commission staff have undertaken an aggressive effort to locate the carriers whose notices were returned by the post office as undeliverable. The 51 carriers from this effort and 20 additional carriers from another inquiry were assigned to analysts that are using all available resources to obtain correct addresses for these carriers. While staff located many carriers and resent the survey, the carriers that were not found or did not respond will have their CPCN suspended via the Commission Resolution process. After the analysts completed these "undeliverable" carriers, they followed the same process with the 212 nonresponsive carriers. Again, carriers that did not cure their lack of a response will have their CPCN suspended via the Commission Resolution process.

To date, Commission staff have identified 48 carriers which have not filed responses. Diligent efforts to locate these carriers have been unsuccessful. Resolutions suspending these carriers' CPCNs are pending on the Commission's agenda. Additional such suspension resolutions are expected in the future.

12. The Commission's Consumer Protection Role and Responsibilities

At the crux of many parties' comments, particularly those of the consumer advocates, was the need for the Commission to do more to protect consumers from unauthorized billing and service provider transfers. The Staff Report addressed these issues by recommending that the Commission (1) increase enforcement staff dedicated to telecommunications issues, (2) increase the time staff is available by telephone to answer consumers' questions and process informal complaints, and (3) ensure the availability of multi-lingual staff. The Staff Report concludes that these recommendations are largely internal management decisions which do not require official Commission action. One further recommendation which would require official Commission action is the use of community-based organizations to augment consumer education efforts.

As a basis for a specific need for expanded consumer education, the Staff report included summaries of four studies commissioned by different sources which suggested that non-English speaking consumers tended to experience higher rates of unauthorized customer transfers. The Staff Report noted that these studies are supported by the Commission's experience where at least one unscrupulous carrier has targeted recent immigrants for its marketing efforts.

The Commission has previously expressed its dissatisfaction with this phenomenon. See Cherry Communications Systems, 62 CPUC2d 656 (D.95-12-019); Communications TeleSystems International, D.97-05-089. The Staff Report recommends using community-based organizations as a means of enhancing consumer education, particularly of consumers that may be targeted for these practices. Greenlining supports using such organizations to reach limited and non-English speaking consumers because effective education must come from groups in which the consumers have faith and confidence. Many of the consumers Greenlining surveyed indicated that they feared retaliation for complaining about unauthorized transfers. Greenlining stated that until consumers understand that they have a viable forum for registering and pursuing complaints, high levels of abuse will persist.

The Commission regards consumer protection as central to its fundamental mission. To better direct its resources in furtherance of this mission, the Commission established a Consumer Protection Task Force which has researched and evaluated many aspects of the Commission's consumer protection role and responsibilities. The Task Force issued a report in which it made several recommendations to improve the manner in which the Commission protects consumers:

- improve public intake and resolution of consumers' informal complaints,
- proactively identify consumer problems and trends in consumer fraud, and take expeditious corrective action,
- streamline consumer protection rules for competitive utility service providers, and
- provide information to the public and to service providers.

Among the specific action items discussed in the consumer protection staff report is the use of community-based organizations to allow the Commission to more effectively leverage resources and the local presence of these organizations. While the report notes that several stakeholders have requested that the Commission implement a plan of using community-based organizations, the report concludes that the Commission must first lay the groundwork for such plans by changing and re-organizing its current management of consumer protection matters.

While we are intrigued with the potential of using community-based organizations to address unauthorized billing and customer transfer issues, the use of these organizations is being considered in another forum. Because that forum will address broader consumer protection matters and not just "slamming and cramming," it is better suited to resolving the substantial funding and oversight issues that such programs create. In the interim, however, we shall order the local exchange carriers to develop and submit a plan for consumer education to enhance awareness of the options currently available to consumers.

13. Rate Disclosure Requirements

TURN advocated a set of rules that would require all carriers to provide their rate terms in writing in response to a consumer request. TURN noted that consumers are often confused by long distance service price offers which can contain hidden costs. TURN proposed that all carriers be required to provide written rates, terms and conditions upon request. TURN noted that a standardized disclosure format would be most desirable but is impractical given the complexity of most long-distance pricing.

In its Report, Staff recommended that this issue be taken up in the Commission's review of General Order 96-A, which covers the availability of utility information. TURN declares this to be consigning the issue to oblivion because it will be ignored in the multi-issue GO 96-A proceeding.

TURN's fears have not been realized in the GO 96-A proceeding. There the Commission has explicitly addressed the issues of customer notice of rate increases and the availability of information on services. Specifically, the Commission clarified that the purpose of required tariff rule 12 was to "ensure that the utility informs customers of new or optional services and rates, and that the public can determine how to get information on kinds of services that the utility offers, the prices and terms of service, any conditions on eligibility, and the like." Rulemaking for purposes of revising General Order 96-A regarding informal filings at the Commission, R.98-07-038, at pp. 24-25. Nontariffed service providers are subject to the very rule TURN advocates: "[r]ate information and information regarding the terms and conditions of service shall be provided in writing upon request." Rulemaking on the Commission's Own Motion to Establish a Simplified Registration Process for Nondominant Telecommunications Firms, R.94-02-003/I.94-02-004, at p.10-11 (D.98-08-031). Thus, far from oblivion, TURN's recommendation is being considered for tariffed services and has been adopted for detariffed services.

14. Removing the Economic Incentive For Slamming

In its Report, Staff recommended that the Commission require carriers to refund all charges paid by customers who allege that they were transferred without authorization. GTE and other parties objected to this proposal due to its potential to entice unscrupulous customers to falsely allege that they were transferred without authorization.

In a recent rulemaking, the FCC has adopted a rule similar to that proposed by Staff. On December 17, 1998, the FCC adopted its "Second Report and Order and Further Notice of Proposed Rulemaking" in its docket, CC No. 94-129, which is addressing unauthorized changes to consumers' long distance carriers. The FCC decision addresses many of the issues that have been presented in this proceeding in addition to removing the economic incentive for slamming.

On May 18, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision partially staying the FCC slamming rules. Those rules remain pending before the court.

15. Comments on Second Draft Decision

The second draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments and reply comments to the proposed decision were timely filed by Pacific Bell, TURN, ORA, CSBA, the Small LECs,[18] Greenlining, Roseville Telephone Company, Citizens Telecommunications Companies, CALTEL/TRA, Nextlink/ICG, GTE, Sprint, MCI, AT&T and the Smaller Independent LECs.[19]

Rule 77.3 of the Commission's Rules of Practice and Procedure specifically requires § 311 comments to focus on factual, legal, or technical errors in the proposed decision and in citing such errors requires the party to make specific references to the record. Comments that merely reargue positions taken in briefs

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[18] The small LECs are Evans Telephone Company, GTE West Coast Incorporated, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Company, The Siskiyou Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company.

[19] The Smaller Independent LECs are Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., The Ponderosa Telephone Co., and Sierra Telephone Company, Inc.

are accorded no weigh and should not be filed. Rule 77.4 further requires that comments proposing specific changes to the proposed decision include supporting findings of fact and conclusions of law.

The comments filed by the parties to this proceeding have been carefully reviewed and considered. To the extent that such comments required discussion or changes to the proposed decision, the discussion or changes have been incorporated into the body of this order. Comments, which have not complied with Rule 77.3, were not considered.

Findings of Fact

1. Consumers abhor being removed from their carrier of choice and being forced to take service from another carrier.

2. Consumer protection requires consideration of more than just the financial losses associated with unauthorized transfer.

3. Consumers are deeply frustrated and annoyed by the time and aggravation necessary to correct unauthorized charges.

4. Consumers may contact their local exchange carrier and dispute a charge from another service provider that appeared on their bill and if all attempts to resolve the cramming dispute with the service provider have failed, the LEC will remove the charge.

5. The LEC process provides consumers a relatively quick and inexpensive means of resolving third party billing disputes. Unfortunately, too few consumers are aware of and use this process.

6. Greenlining presented sworn statements from consumers stating that they lost or feared of disconnection of local service for nonpayment of long distance charges.

7. The policy of allowing disconnection of local service for nonpayment of interexchange charges helps create consumers' perception that all charges, even

unauthorized charges, must be paid to avoid disconnection. This perception furthers the interests of unscrupulous carriers.

8. The Commission's explicit purpose of allowing local exchange carriers to terminate local service for nonpayment of third party long distance was to use the incremental revenue to lower local service charges to local customers.

9. The purpose of local service disconnect is no longer being served because regulatory changes have resulted in the additional revenue from billing and collection contracts being credited to shareholders rather than local customers.

10. Allowing incumbent local exchange carriers to enhance the value of their billing and collection services hinders competition with competitive local exchange carriers because the competitive carriers cannot offer such services.

11. MCI and Sprint presented mathematical quantification of the increased amounts of unpaid charges or "bad debt" or uncollectibles which would result from removing the local disconnect policy.

12. TURN presented expert testimony that challenged the reliability of MCI's and Sprint's information.

13. No party presented testimony that uncollectible accounts are not a generally accepted cost of doing business.

14. No party presented evidence that any type of service provider, other than long distance telecommunications carriers, is allowed to use the threat of disconnection of local service to secure payment for its services.

15. CALTEL requested a hearing but when offered an opportunity to submit additional evidence failed to present any evidence whatsoever much less evidence of material disputed facts.

16. Where one carrier, other than an incumbent local exchange carrier, is providing both local and interexchange service, it is commercially reasonable to

allow the carrier to disconnect both services for nonpayment of undisputed charges for either service.

17. Identifying the carrier that is wrongfully billing or serving a customer is essential to evaluating claims of unauthorized billing or customer transfer.

18. Requiring interexchange carrier's and service provider's names, as defined herein, on local exchange carriers' bills and service transfer documents (letters of authorization) will allow Commission consumer services staff to accurately identify the carrier or service provider and assist the consumer in resolving the dispute.

19. Where a reselling carrier does not have a unique Carrier Identification Code (CIC), the local exchange carrier cannot maintain accurate records about that particular carrier's customer dispute rate.

20. A competent carrier should be able to process LOA and request a service transfer from the local exchange carrier within 90 days and if not, the carrier should obtain the customer's authorization again.

21. In D.98-02-009, the Commission ordered an audit of all California telephone corporations to ensure industry-wide compliance with the statutory requirement that all residential customer transfers from one long distance carrier to another be verified by an independent third party, and over one third of the Commission-certificated carriers did not respond to the Commission's order.

22. Customer notice of rate increases and the availability of information on services has been or is being considered in other proceedings.

Conclusions of Law

1. Section 2889.9 gives the Commission limited jurisdiction over billing agents and companies that provide products or services charged on subscribers telephone bills and requires that the Commission establish

rules for each billing entity to provide to the Commission reports of consumer complaints. Those rules are set out in Attachment B.

2. In A.83-01-022, I.83-04-02 and C.83-11-07, the Commission authorized the rates that local exchange companies could charge interexchange carriers billing and collection services and allowed local exchange companies to terminate local service for nonpayment of interexchange carrier charges. The revenue generated by the value-added billing service would be used to lower local service charges to local customers.

3. Parties to a proceeding which resulted in a decision the Commission is considering rescinding, altering or amending must be afforded an opportunity to be heard as in the case of complaints.

4. Complainants do not have an absolute right to an evidentiary hearing.

5. Parties to a proceeding which resulted in a decision that the Commission is considering changing do not have an absolute right to an evidentiary hearing pursuant to § 1708.

6. Complainants must justify the expense of holding hearings by making some showing of facts, law and jurisdiction which support their requested relief.

7. No party made a showing of material disputed facts to justify the expense of additional hearing procedures.

8. Where the Commission has invited parties to submit written evidence and a party subsequently files a request for a prehearing conference and hearing, but the party submits no written evidence, nor an explanation for its absence, the Commission may decline to offer further procedural opportunities.

9. The FCC's rule which prohibited carriers eligible to receive federal universal service support from disconnecting Lifeline service for non-payment of toll charges has been vacated by the Court of Appeals.

10. The public interest no longer supports allowing local exchange carriers to disconnect local service for nonpayment of interexchange carrier charges.

11. Where the same carrier, that is not an incumbent local exchange carrier, is supplying both local and interexchange service, the policy reasons which render the current disconnection rules unreasonable do not apply because the local exchange carrier is not providing billing services to a third party.

12. Section 2890(d) recognizes the Commission's discretion to allow local service disconnect, but only for enumerated charges.

13. The public interest requires that reselling interexchange carriers have a unique identifier when making carrier-initiated customer transfers, either a Carrier Identification Code (CIC) or some other means which allows the local exchange carrier to maintain accurate records about that particular carrier's customer transfer dispute rate.

14. The public interest and § 2890 require that service providers, both Commission-certificated or those which are not required to obtain an operating certificate, include their name when billing through incumbent local exchange carriers. The name used on the bill shall be the name on the carrier's Certificate of Public Convenience and Necessity or, in the case of uncertificated service providers, the name on any FCC certificate or business license.

15. Section 2889.5 does not explicitly include a temporal requirement - that is, the duration of the validity of the signed document.

16. Section 2889.5 necessarily implies that the customer's intention to transfer to another telephone corporation coexist with the signing and submission of the

LOA. Such intention can also be assumed to apply during an administratively direct route from the signing to the actual switch.

17. Interpreting § 2889.5, any document which is dated more than 90 days prior to presentation to the local exchange company is too removed in time to represent accurately the customer's intention to transfer to another carrier.

FINAL ORDER

IT IS ORDERED that:

1. Within 90 days of the effective date of this order, all Billing Telephone Companies shall submit an advice letter which sets out the Company's compliance implementation plan indicating on a topic-by-topic basis how the Company addresses the consumer protection levels recommended in the Anti-Cramming Best Practices Guidelines (see Attachment A). The compliance filing shall also include drafts of all needed tariff filings. The compliance filing advice letter shall be processed through the usual advice letter process and served on all parties of record.

2. The Subscriber Complaint Reporting Rules set out in Attachment B are adopted.

3. All Billing Telephone Companies shall, within 90 days from the effective date of this order, file and serve an advice letter with a proposed consumer education plan which conforms to the requirements set out in Attachment C.

4. Incumbent local exchange carriers shall file and serve advice letters that contain revised tariffs within 180 days after the effective date of this order that conform to the portions of this order eliminating incumbent local exchange carriers' authority to disconnect local service for nonpayment of interexchange service. Pending such advice letter filings, current tariffs shall remain effective.

5. No later than 180 days after the effective date of this order, Billing Telephone Companies shall submit an advice letter containing a plan for requiring all entities which use their billing and collections services to provide the unique name of the carrier or service provider as specified in this decision, for inclusion in the bill and for the Billing Telephone Company to tabulate consumer complaint rates on an entity-by-entity basis.

6. Incumbent local exchange carriers shall file and serve a compliance filing advice letter no later than 180 days after the effective date of this order that requires all interexchange carriers that do not have a unique Carrier Identification Code (CIC) and that submit carrier-initiated customer transfers to provide their Utility Number for each customer transfer and for the incumbent local exchange carrier to tabulate consumer dispute rates on a carrier-by-carrier basis.

7. Competitive local exchange carriers shall not submit and incumbent local exchange carriers shall not honor service provider change requests submitted more than 90 days after the customer authorized the transfer, unless a written contract between a facilities-based carrier and the customer clearly states that the actual transfer will occur more than 90 days in the future.

8. This order shall be served on all incumbent local exchange carriers, all competitive local carriers, and all interexchange carriers.

9. This proceeding is closed.

This order is effective today.

Dated March 2, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners

ATTACHMENT A

[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 collOctions 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.

5. 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.

6. . 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.

7. 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.

8. 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.

9. 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.

10. 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.

(END OF ATTACHMENT A)

Attachment B
Page 1

Subscriber Complaint Reporting Rules

Definitions:

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

Customer Complaint: Any written or oral communication to a Billing Telephone Company or Billing Agent from a person or entity which has been billed for a charge which the person or entity alleges was unauthorized or resulted from false, deceptive, or misleading representations and which was billed, either directly or indirectly, through a billing telephone company.

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

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

1. **Authorization Required**: Prior to billing or causing to be billed any charge to a subscriber on a telephone corporation bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in Pub. Util. Code § 2890(c). Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are

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unauthorized. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.

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

3. **Records of Billing Disputes**: Every billing telephone company shall maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third party, including corporate affiliates. Such records shall be retained for three years. Every billing agent shall maintain accurate and up-to-date records of all customer complaints regarding charges billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records shall also include information on all consumer complaints received involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records shall also include all consumer complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill. These records shall include the following information:

a. the subscriber name;

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b. the subscriber telephone number and the unique subscriber identifier;

c. the name of the service provider responsible for the charge complained about;

d. the name of the billing agent or agents, if any;

e. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;

f. a description of the product or service billed;

g. the number of contacts by the subscriber;

h. the disposition of the dispute;

i. the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider; and

j. the total number of telephone lines billed by the billing telephone company or billing agents for each service provider.

These records shall be provided to Commission staff promptly upon request. Staff may request that any billing telephone company or billing agent provide some or all of this information to the staff on a continuing basis and the entity shall comply with all such requests.

5. **Quarterly Calendar Month Summary Report**: All billing telephone companies and billing agents shall create a calendar month summary report which shall include the following information:

a) the total number of consumer complaints received each month for each service provider and billing agent

b) the name, address, and telephone number of each entity receiving complaints;

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c) the total number of subscribers billed for each entity for which complaints were received;

d) the total dollars billed for each entity for which complaints were received.

The Calendar Month Summary Report shall be submitted to the Director of the Commission's Consumer Services Division pursuant to the following schedule:

- Report for January, February, and March due no later than April 30th
- Report for April, May and June due no later than July 31st
- Report for July, August and September due no later than October 31st
- Report for October, November, and December due no later than January 1st of the following year.

If no complaints exist, in lieu of this report, a letter shall be sent to the Director of the Consumer Services Division affirmatively stating that no complaints exist for the quarter.

6. **Effect of Failure to Supply Report.** Pursuant to § 2889.9(f), any billing agent which fails to submit its report in a timely fashion may be the subject of a Commission decision or resolution ordering the billing telephone company to cease providing billing and collections service to that billing agent or service provider, in addition to the Commission's other remedial statutory authority as provided in § 2889.9(b).

(End of Attachment B)

Attachment C

Consumer Education Plan

Objectives:

(1) To ensure that Billing Telephone Companies consistently inform customers of third party billing dispute procedures and avenue for redress

(2) To ensure that Billing Telephone Companies consistently inform customers that local telephone service will not be disconnected for failure to pay non-local charges.

Contents: At a minimum, each Billing Telephone Company shall inform its residential and small business customers:

(1) That all erroneous, unauthorized, or questioned charges can be disputed

(2) Of the customers' recourse for disputed charges, including a Billing Telephone Company's authority to address the dispute, in any, as well as the Commission's complaint process

(3) Availability of any multi-lingual capabilities

Means of Education:

(1) Bill insert or information printed on bills

(2) Inform Community Based Organizations of Plan contents for their dissemination to their constituents

(3) Customer service representatives

Role of Public Advisor

The Public Advisor shall review and approve all Consumer Education Plans.

(End of Attachment C)