

## 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*.<sup>@</sup> 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 LECs' reputation and hurts consumer confidence in the LEC.

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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.

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### **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.

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### **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

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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
- S** clearly and conspicuously disclose all material terms and conditions of the offer, including without limitation,
  - S** the amount of the charge which will be billed to the End-user Customer's telephone bill
  - S** 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
- S** clearly and conspicuously disclose that the charges will appear on the End-user Customer's telephone bill
- S** 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

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### **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.

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### 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 collections 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.

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### **D. Administrative Charges**

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

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

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

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

### **E. Settlement Process Modification**

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

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

### **F. Clear Criteria for Clearinghouse Function**

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

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1. The Clearinghouse should be responsible for activities performed by their subCIC customers.

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2. The Clearinghouse should ensure that the only charges that are submitted for each subCIC are those that have been approved for billing through the LEC's program approval process.
3. The Clearinghouse should provide adjustment reports for each of their subCICs to the LEC. The data to be provided on these reports should be, at a minimum, subCIC name and identification number, number of adjustments, adjusted revenue, number of accounts billed and revenue billed.
4. The Clearinghouse contract with their subCICs should ensure that the LEC has the right to audit the Service Provider and/or the subCIC data used to provide the above referenced reports. A copy of this contract provision should be provided to the LEC.

### **G. Confidentiality**

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

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

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

### **I. Other Contract Provisions**

1. The LEC should consider a contract provision that requires each billing and collection customer to provide the LEC with requested information about their (or any Service Provider that is billing through that B&C customer) operating history related to cramming in other geographic areas.

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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.

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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.

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- 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 off-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.

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2. The identity of Service Providers either terminated or notified of a need to cure due to cramming related problems.

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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.

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.

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- 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.

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- 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**

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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.

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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.