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ON BEHALF OF THE

COALITION TO ENSURE RESPONSIBLE BILLING (“CERB”)*

BEFORE THE

**SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE AND CONSUMER
PROTECTION
OF THE HOUSE COMMITTEE ON COMMERCE**

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* The Coalition to Ensure Responsible Billing (“CERB”) comprises billing clearinghouses that process more than 90% of all billing submitted to local telephone companies by third parties. These billing clearinghouses perform billing and collection functions for competitive providers of basic and enhanced telecommunications services.

I. Introduction

Thank you for the opportunity to present testimony on the very important issue of cramming. I am testifying not just on behalf of Billing Concepts but also on behalf of a coalition of billing clearinghouses that was formed to address this critical consumer protection issue. The Coalition to Ensure Responsible Billing (“CERB”) is actively working to combat cramming and has developed standards to protect consumers against the practice.

Billing Concepts, Inc., is a billing clearinghouse that processes \$2 billion annually in charges for telecommunications products and services to be billed on consumers’ local telephone bills. Billing Concepts had annual revenue of over \$120,000,000 last year and has 725 employees in San Antonio and Corpus Christi, Texas.

The billing clearinghouses that formed CERB process well over \$3 billion annually in charges to local telephone bills and represent a critical link in an increasingly competitive market for telecommunications and related products and services. Billing clearinghouses consolidate the charges from a myriad of telecommunications and related service providers and contract with local phone companies for those charges to appear on customers’ monthly bills. Billing clearinghouses play a critical role in ensuring that consumers are protected from cramming and in fostering a competitive market for telecommunications and related products and services.

I. Understanding the “Cramming” Problem

Before exploring the role that billing clearinghouses can and should play in protecting consumers from cramming, it is important to understand how legitimate charges appear on consumers’ telephone bills. In the vast majority of cases, consumers authorize these charges to appear on their telephone bill because they appreciate the convenience of having the charges consolidated on one monthly bill and the ease of writing only one check each month to cover a variety of services. Indeed, a study by the Yankee Group indicated that 80% of consumers prefer

a single bill for their telecommunications services.¹ This also allows more competitors in the market and creates the wide variety of competitive choices in telecommunications products and services that is necessary to foster a competitive market.

A. How Charges Appear on Consumers' Local Phone Bills

Local telephone companies or local exchange carriers (“LECs”) prepare and send the monthly telephone bill to the consumer – the “billing” function – and they collect payments from the consumer and apply them to the charges on the account – the “collection” function. Local phone bills include charges for the local phone service and, typically, include charges related to other telecommunications services. The most common charges are for long distance service, although a consumer’s bill may also contain charges from other service providers, such as voice mail, calling cards, paging and caller identification. With the proliferation of these new and innovative telecommunications services, as well as other information and related services, local telephone bills have become the vehicle of choice for billing a wide variety of telecommunications products and services.

In order for charges from other service providers to be included on a consumer’s local telephone bill, these companies either must contract directly with the local phone company to provide their billing and collection service or they must contract with a billing clearinghouse which, in turn, arranges for their charges to be billed through the local phone companies. The larger companies, such as long distance giants Sprint or AT&T, contract directly with the local phone company for their charges to appear on the consumer’s monthly bill. Smaller companies, however, typically use a billing clearinghouse to arrange for their charges to be billed on the customer’s local telephone bill. These companies are either too small or have too few transactions to contract directly with local phone companies; billing clearinghouses act as

¹ Presentation of Panelist E.E. Estey, Vice President, Government Affairs, AT&T Corporation, before the Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses (June 24, 1997).

middlemen between these smaller service providers and the local telephone companies. Billing clearinghouses thus perform the vital role of consolidating billing and collection functions for many small telecommunications service providers and submitting the charges to the local phone companies to be included on local telephone bills. Billing clearinghouses thus promote competition by reducing the barriers to new entry in the market.

A. **What is “Cramming” and How Does it Happen?**

“Cramming” occurs when charges appear on a consumer’s local telephone bill for programs, products or services the consumer did not *knowingly* authorize. Cramming charges on consumers’ local telephone bills constitutes fraud and a serious consumer problem. Cramming is a broad term that encompasses a wide range of unscrupulous, anti-consumer conduct. At its most extreme, cramming can be the knowing and intentional fraudulent submission of charges that the consumer never authorized. Cramming runs the gamut from these outright fraudulent schemes and scams to less blatant conduct that is more difficult to police and to correct. The failure to disclose the terms of service to the customer clearly and conspicuously at the time the service is authorized also constitutes cramming. Consumers are entitled to know and understand precisely what the terms of service will be and how the charges will be billed before they authorize any charges to appear on their telephone bill. As discussed below, billing clearinghouses and other participants in the industry have made a strong commitment to ensure that consumers are not victimized by such practices and that, if cramming does occur, consumers have a clear recourse to rectify the harm.

A. **Cramming Harms Consumers and the Industry**

Cramming harms consumers, threatens the integrity of the local telephone bill and imposes great costs on billing clearinghouses. Consumers obviously suffer harm from cramming. When unauthorized charges appear on their phone bills, consumers often feel forced to pay the charges because they are concerned that their local telephone service may be

disconnected for failure to pay the bill.² Although most states prevent local telephone companies from cutting off customers' service for failure to pay the charges of other service providers such as long distance service, consumers do not understand that and thus respond to the perceived pressure and pay the charges.³ More generally, consumers can be confused by telephone-related advertising, marketing, and billing practices and this confusion is likely to intensify as competition increases and new companies offering new services enter the market.

Clearly, whatever fraudulent scheme crammers use to charge consumers, these providers are taking advantage, not only of consumers, but also of the LECs and the billing clearinghouses to perpetuate their fraud. The entire industry is thus tarnished by the bad actions of a few. Billing clearinghouses alone stand to lose millions annually from cramming. For example, when a fraudulent service provider uses a billing clearinghouse to bill unwitting consumers, the service provider may eventually disappear, leaving the clearinghouse to absorb the full cost of the credits given by the LEC to consumers who complained. This occurs because, typically, the LEC will have already paid the billing clearinghouse, which may have already paid its service providers. When consumers complain, the LECs give credits to the consumers and then deduct the amount of the credits from their payments to the clearinghouse, which must absorb the full cost of the credits if the offending provider is gone. Billing clearinghouses work hard to screen out these rip-off artists and are usually successful in doing so. When a fraudulent provider does slip through the cracks, the billing clearinghouse risks its reputation, its bottom line, and its relationships with the LECs.

Local telephone companies also have an interest in preventing unscrupulous service providers from cramming charges onto their customers' local telephone bills. LECs are often the

² Prepared Statement of Lawrence E. Strickling, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, submitted to the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, Hearing on Telephone "Cramming" (July 23, 1998), at 4-5.

³ *Id.*

first contact for consumers to complain about cramming and to request help to resolve the issue with the offending service provider. Legitimate service providers also share an interest in protecting consumers from cramming. Their reputations may be tarnished by adverse publicity about fraudulent providers and consumer skepticism might make it more difficult to attract new customers. In short, the LECs and legitimate service providers share the interest of the billing clearinghouses in eliminating cramming altogether.

I. Responses to Cramming

In light of the growing consumer concern over cramming, several measures have been proposed and implemented to address this problem at different levels of government and industry. As outlined in detail below, CERB has implemented Standards of Practice for billing clearinghouses to employ in an industry-wide effort to reduce cramming. In addition, at the federal level, the Federal Trade Commission (“FTC”) has brought enforcement actions against participants in cramming schemes and the Federal Communications Commission (“FCC”) has proposed a rulemaking to require LECs to include more information on consumer bills and to present that information in a readily understandable format. States have also implemented legislation and rules designed to prevent cramming. Finally, LECs have also developed guidelines to implement their anti-cramming efforts. In short, government and industry have taken strong, positive steps toward crafting solutions designed to resolve and even eliminate the problem of cramming.

A. CERB: Standards of Practice

Recognizing the critical role billing clearinghouses must play in curbing cramming and protecting consumers, three billing clearinghouses banded together to form the Coalition to Ensure Responsible Billing (“CERB”). The founding members are Billing Concepts, OAN Services and Federal TransTel. The first matter of business when the Coalition formed last July was drafting mandatory Anti-Cramming Consumer Protection Standards of Practice. (A copy of the CERB Standards is attached to this testimony.) The Standards outline stringent, pro-

consumer policies for ensuring that only legitimate charges appear on consumers' bills. The founding members of the Coalition signed the Standards and invited others in the industry to do the same. To date, nine clearinghouses have signed, and we anticipate that by October 1 most, if not all, billing clearinghouses will have joined us. On October 1, 1998, the Coalition will present a copy of the CERB Standards and a list of all signatories to the FCC, the FTC, all state public utility and service commissions and each state attorney general.

1. **Pre-Screening of Providers and Services**

The CERB Standards require billing clearinghouses to pre-screen all prospective service providers and the programs, products and services they offer. First, the Standards require every billing clearinghouse to pre-screen every provider. As a precondition to any business relationship, service providers must disclose comprehensive background information to the billing clearinghouse. (A copy of a sample Third Party Verification Declaration developed for this purpose is attached to this testimony.) The information required ranges from the names of the company's officers, to whether the company or any of its officials has ever been convicted of fraud, to the names of the telemarketing and verification vendors the company plans to use to facilitate marketing its services. Second, the CERB Standards require billing clearinghouses to pre-screen the programs, products and services offered by those service providers. Service providers must supply their consumer marketing materials, such as advertisements, sales and validation scripts, and an honest, clear "text phrase" to be used on consumer telephone bills. The Standards ban questionable marketing practices such as sweepstakes and so-called "negative option" sales offers (where a customer receives a service until informing the provider that it is unwanted). Finally, each Signatory must maintain an internal standards committee to review the information collected for both service providers and programs to ensure that they comply with the Standards before beginning to bill for any service provider.

1.

Compliance Monitoring

Once the billing clearinghouses have pre-screened their service providers and determined their fitness to enter contracts, the CERB Standards require the clearinghouses to maintain active monitoring of providers and programs. Billing clearinghouses must monitor consumer inquiries, complaints to government agencies, and complaints brought to the local telephone company. They must maintain up-to-date records regarding complaints and inquiries and adopt action plans to respond to complaints and inquiries. They also must notify service providers of complaints or inquiries and coordinate investigations with those service providers. Finally, they must take action to correct problems. These measures enable the billing clearinghouses to police better the business practices of service providers and to assure the effectiveness of their screening procedures.

1.

Mandatory Authorization Methods

It is critical that consumers be guaranteed that they will not be billed for any services they did not authorize. Under the CERB Standards, service providers must authorize orders for services by one of three methods: (i) independent third party verification, (ii) a written letter of authorization or sales order, or (iii) a voice recording of the sales conversation. Further, valid authorization must include specific information such as an assurance that the consumer is qualified to authorize billing, a description of the product or service and the applicable charges, an explicit consumer acknowledgment that the charges for the product or service will appear on the telephone bill and, finally, an acceptance by the consumer of the offer. These requirements will go a long way toward ensuring that consumers retain control over the charges that appear on their local phone bills.

1.

Consumer-Friendly Billing Practices

Central to a consumer's right to ensure that they have not been crammed is the ability to read and understand the telephone bill. Informed consumers can better protect themselves from

unauthorized products or services. Thus, the CERB Standards require consumer bills to include a clear description of the biller, the service provider, and the product or service for which the consumer is being charged. The bill must also contain a clear identification of the charges and a toll-free telephone number that subscribers may call to make inquiries concerning the billing.

1. **Consumer Satisfaction**

The CERB Standards demonstrate a commitment to monitoring consumer satisfaction, particularly with regard to any disputes or inquiries that may arise. Toward that end, the Standards require clearinghouses to provide quick and thorough responses to consumer inquiries. Billing clearinghouses must also provide consumers with information about how to contact the service provider, the nature of any charge, the method of authorization and information as to how a consumer may cancel a service or product.

In addition, in order to facilitate resolution of disputes, the Standards require billing clearinghouses to provide a toll-free customer service number and dedicated staff to respond to consumer inquiries. Clearinghouses must also investigate any dispute in a full and timely manner. Further, consumers can be assured that clearinghouses will initiate a credit or respond to the consumer within 30 days of the dispute and that they will not be rebilled on their local telephone bill for charges previously credited.

1.

Disclosure

Finally, in an effort to weed out scam artists before they strike again, the CERB Standards require billing clearinghouses to share with each other and with federal and state enforcement agencies information about service providers whose contracts they have terminated for problems related to cramming. Clearinghouses must retain data on the specific cramming-related practices they have encountered and the steps they have taken to correct those practices. Further, the Standards require clearinghouses to make available aggregate data on consumer cramming complaints that have been filed with federal and state government authorities and received by the signatories.

A. CERB Standards: Preliminary Results

In the three months since the Standards have been created, they have been received enthusiastically in the billing industry. They have spurred discussions among the clearinghouses about methods to end cramming and have been a catalyst in our efforts to share information about good billing practices. Indeed OAN, another coalition member that has adopted the CERB Standards of Practice, recently hosted a joint workshop for LECs and service providers to address the need to combat cramming and to explore ways to implement the CERB Standards.

Billing Concepts, OAN and Federal TransTel are proud of the hard work the Coalition has done to curb cramming. We are also proud of the time and effort we have invested, as signatories, to integrate the CERB Standards in full force into our regular business operations. At Billing Concepts, we have implemented the Standards in all new contracts with service providers that we have entered since July and we are in the process of reviewing all existing contracts to ensure that they comply fully with the Standards. We have trained our staff to review carefully the marketing materials service providers use with consumers and we have enhanced our procedures for tracking complaints against individual service providers and for gathering information from the LECs on the number of adjustments made to consumers' bills. Billing Concepts' staff conducts weekly meetings to identify service providers with potential

cramming problems and we contact those providers immediately upon identifying an issue. We have worked with those providers to develop a corrective action plan, such as hiring an independent third-party verification company, to correct any problems. Finally, in instances where the problem cannot be corrected, we have terminated our contract with the offending provider.

A. **Other Government and Private Activity to Combat Cramming**

While the billing industry has devoted considerable efforts to combating cramming, other segments of the market and the government have undertaken similar measures to attack the problem. At the federal level, the FTC has statutory authority to combat cramming and the FCC has recently issued a notice of proposed rulemaking to implement “truth-in-billing” guidelines to ensure that consumers can understand the charges on their local phone bills. State governments have also implemented measures to prevent cramming, and LECs have proposed industry guidelines to screen out unauthorized charges and to provide consumers with more information on the charges and service providers that appear on their bills. These represent significant steps toward combating the practice of cramming and providing consumers with complete and accurate information so that the problem of cramming can be reduced, if not eliminated.

1. **FTC Authority and Actions Against Cramming**

Congress has already given the FTC broad statutory authority to address cramming and the FTC has demonstrated a willingness to bring enforcement actions to protect against cramming.⁴ The FTC's efforts to curb cramming encompass three broad areas: (i) monitoring consumer complaint trends and identifying targets from those trends, (ii) pursuing targeted enforcement actions, and (iii) educating consumers.⁵ The FTC recently announced enforcement actions against the participants in two cramming schemes.⁶ Further, the FTC has initiated a rulemaking to determine how to exercise its recently-expanded authority to prosecute fraud pursuant to the existing "900-Number Rule" governing the pay-per-call industry, which may strengthen the FTC's ability to combat cramming.⁷

1. **FCC "Truth-in-Billing" Rulemaking**

Earlier this month, the FCC issued a notice of proposed rulemaking on "Truth-in-Billing and Billing Format" to improve the clarity of information and format for consumers' telephone bills.⁸ The FCC recognized that consumer complaints that their telephone bills do not reflect

⁴ Federal Trade Commission Act, 15 U.S.C. § 45(a); *see* Prepared Statement of Eileen Harrington, Associate Director, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, submitted to the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, Hearing on Telephone "Cramming" (July 23, 1998), at 1-2, 10-17.

⁵ Prepared Statement of Eileen Harrington at 10-17.

⁶ *Id.* at 11-15.

⁷ 62 Fed. Reg. 11,750 (1997). The FTC's statutory authority for the "900-Number Rule" was originally granted under the Telephone Disclosure and Dispute Resolution Act of 1992, Pub. L. No. 102-556, 106 Stat. 4181 (1992) *codified at* 15 U.S.C. § 5701 *et seq.* and 47 U.S.C. §§ 227-228, 3022, and was expanded by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 701, 110 Stat. 145, 148 (1996), *codified at* 47 U.S.C. § 228. *See* Prepared Statement of Eileen Harrington at 8-9.

⁸ Federal Communications Commission, Notice of Proposed Rulemaking In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170 (Sept. 17, 1998), slip notice at 2-3.

charges for services in a clear, user-friendly format contribute to the problem of cramming because consumers cannot readily identify whether specific charges for services were authorized or received. In the Notice, the FCC sought comment on ways to ensure that customers receive “thorough, accurate, and understandable bills from their telecommunications carriers.”⁹ Specifically, the FCC also proposed three “truth-in-billing” guidelines to ensure that consumers are treated fairly. First, bills should be organized clearly and highlight new charges or changes in service. Second, all charges should be described fully and service providers should be identified clearly. Third, bills should disclose clearly and conspicuously enough information for consumers to inquire about charges on the bill. In addition, the FCC sought comment on other specific requirements to achieve those objectives and on the burdens imposed by these requirements. This effort to clarify the information on consumer bills represents a significant step forward in eliminating the consumer confusion that makes cramming possible.

⁹ *Id.* at 4.

1.

State Activity to Address Cramming

State legislatures and regulators across the country have also recognized the seriousness of cramming and have embarked upon various initiatives to address the problem. For example, the California legislature recently passed anti-cramming statutes that would require clarification of charges included on a telephone bill and would grant state authorities increased enforcement powers.¹⁰ A Tennessee law imposes a one hundred dollar (\$100) per day penalty for cramming.¹¹ An Idaho statute makes it unlawful to bill a consumer for goods or services in addition to the consumer's telecommunications services without authorization.¹² An Illinois statute prohibits the use of sweepstakes boxes to solicit authority to provide telecommunications or related services.¹³ The Maryland Public Service Commission¹⁴ and the Texas Public Utilities Commission¹⁵ currently have rulemakings on cramming underway. In New York, the Public Service Commission ("PSC") has required telephone companies to file plans showing how they will prevent cramming and how they will resolve cramming complaints; the PSC is gathering this information in an effort to determine ways it can regulate against cramming.¹⁶ Overall, the states have recognized that cramming is a serious consumer issue and more activity is anticipated to address the problem.

¹⁰ 1997 Cal. A.B. 2142 (1998), *to be codified at* Cal. Pub. Util. Code § 2889.9; 1997 Cal. S.B. 378 (1998), *to be codified at* Cal. Pub. Util. Code § 2890.

¹¹ More Phone Customers Report Unwanted Services, *The Tennessean*, July 24, 1998, at 3E.

¹² 1998 Idaho Sess. Laws Ch. 274, *to be codified at* Idaho Code § 48-603D(3)(2).

¹³ 1997 Ill. S.B. 1567 (1998), *to be codified at* 220 Ill. Comp. Stat. 5/13-902.

¹⁴ Beware Crammers, Slammers, Dozens Complain to PSC of Odd Charges on Telephone Bills, *Baltimore Sun*, May 24, 1998, at 1F.

¹⁵ 23 Tex. Reg. 8784 (Aug. 28, 1998).

¹⁶ Cramming Plans Sought In New York, *Communications Today*, July 2, 1998.

1. **Joint Government/Industry Anti-Cramming Guidelines**

Not only have the Coalition, the FTC, and the states attacked cramming, the FCC and the LECs have played a critical leadership role in devising ways to curb fraudulent and misleading billing practices. Under Chairman Kennard's leadership, the FCC in May convened a workshop for large LECs and representatives of the United States Telephone Association ("USTA"), the Association for Local Telecommunications Services ("ALTS"), and CompTel (an association of competitive telecommunications service providers). On July 22, 1998, the FCC and the participants in the workshop released guidelines that represent the industry's "best practices" to combat cramming. These voluntary guidelines suggest (1) greater clarity on the consumer local telephone bill, and the inclusion of information about how to dispute charges; (2) allowing greater consumer control over what charges appear on their bills; (3) verification that charges were ordered; (4) screening of products, services and providers; (5) assurance that only authorized charges are billed; (6) consumer education regarding dispute resolution; and (7) the provision of cramming data to law enforcement agencies.

These guidelines represent an important step forward to help stop cramming. The Coalition fully supports this concerted effort to implement pro-consumer practices. As billing clearinghouses, we are committed to working with federal and state enforcement authorities, with federal and state legislators and with every sector of our industry to combat and solve the problem of cramming. Indeed, we have fully supported the efforts of the LECs to review every billing clearinghouse contract and have willingly submitted to their contract reapproval process to ensure compliance with the Best Practices Guidelines. We fully expect that these initiatives launched by CERB, the FTC, the FCC, the states and the LECs will significantly reduce cramming practices and effectively put crammers out of business. At the same time, however, we are very aware that, just as cramming harms consumers and the industry, so can solutions that ignore the critical pro-competitive role that billing clearinghouses play in the development of a vibrant and innovative telecommunications industry.

I. Unique Pro-Competitive, Pro-Consumer Role of Billing Clearinghouses

Before implementing additional solutions to the problem of cramming, Congress, the LECs and the states must recognize the tension between imposing measures strict enough to limit access to the consumer's local phone bill and protect against cramming but not so strict as to shut off access to the phone bill as a practical matter and thus eliminate competition. It is critical to recognize that billing clearinghouses play a unique and crucial role in promoting competition within the service provider market and in expanding the opportunities for consumer choice. Billing clearinghouses serve as the gateway to the local telephone bill, and thus to the consumer, for competitive service providers. Without clearinghouses, and therefore without access to the local telephone bill, smaller competitors would find it nearly impossible to compete with the larger, entrenched companies. This would have serious anti-competitive effects because billing clearinghouses fulfill significant roles in promoting competition. Precipitous anti-cramming measures that jeopardize or undermine billing clearinghouses' ability to fulfill that unique pro-competitive role run the risk of overreaching and eliminating competitors and competition.

A. Promote New Competition in Existing Markets

Many large competitors in the market for long distance and other services contract directly to have local phone companies bill and collect their charges. Smaller competitors, however, do not have a large enough volume of charges or a large enough share of a local market to make it economically feasible to contract directly with each of the local phone companies. Billing clearinghouses play a unique role in promoting competition by consolidating charges from many competing service providers and arranging for billing and collection services through the billing clearinghouses' existing contracts with local phone companies. Billing clearinghouses reduce the transaction costs for these smaller service providers and thus enable them to enter the market and to compete vigorously with their larger rivals. By creating an economy of scale in billing services, billing clearinghouses can level the playing field by

reducing the barriers to entry for new competitors to enter existing markets and to compete vigorously with larger providers.

As a practical matter, the barriers to entry for new competitors in telecommunications service markets are very high. LECs simply will not enter into contracts with smaller service providers. For a service provider to enter into contracts directly with all of the local telephone companies – necessary to provide for billing their services to customers nationwide – it would cost approximately \$1,000,000 in direct, up front payments just to enter those contracts.

Although this represents a practically insurmountable hurdle for a start-up telecommunications service provider, there is also another barrier to entry that would keep these companies from competing without the services of a billing clearinghouse. Under these contracts, the LECs require that service providers guarantee a minimum level of billings monthly to continue the contract. For a service provider to contract directly with the LECs, it would likely have to guarantee at least \$3,000,000 to \$4,000,000 in minimum annual billings under these contracts. If the provider failed to meet the minimum dollar amount guaranteed under the contract, then the provider would have to make up the difference and pay the shortfall directly to the LEC. In practice, without the billing clearinghouses to aggregate the charges from a number of smaller service providers and to contract directly with the LECs for billing, then only companies with very large billing volumes would be able to compete. Clearly, then, billing clearinghouses play a critical, pro-competitive role in reducing the barriers to entry for telecommunications services providers and in providing an economy of scale in billing services to allow smaller competitors to compete in the market.

A. **Create New Niche Markets**

Billing clearinghouses also make it possible for specialized “niche” markets, such as that for casual calling services, to be created and to prosper. Without the economical access to consumers’ monthly bills that clearinghouses offer, it would simply be impossible to have competition in many markets where competition exists today. For example, when consumers

make long distance calls from pay phones, they either use the long distance carrier under contract for that particular phone or they have the choice of “dialing around” that carrier to access the services offered by a competitor (such as 1-800-COLLECT). If small long distance carriers were forced to bill customers directly for their charges -- sometimes as little as 90¢ for one call -- they simply could not remain competitive. The cost of creating and maintaining separate billing systems to every household in the country is prohibitive and unnecessary. The LECs, as regulated monopolies in the market for local phone service, have already established ubiquitous coverage for billing charges and competitors simply need access to those bills in order to be competitive. By consolidating small charges from a number of different service providers and arranging for them to be included on consumers’ monthly phone bills, billing clearinghouses also allow start-up companies with innovative products or services to take advantage of the billing economy of scale while developing their customer base for the new market. In short, billing clearinghouses not only reduce the barriers to entry for existing markets but also foster the creation of new markets by eliminating the need to develop independent billing and collection services.

A. **Expand Options for Consumer Choice**

By virtue of the twin roles clearinghouses play in promoting competition – enabling new entry into existing markets and fostering the creation of new markets – billing clearinghouses dramatically expand the options available for consumers. Consumers not only have access to more competitors and thus have a wider variety of price and service options to satisfy their demand, but they also have the convenience of having the charges for a variety of products and services consolidated on one monthly bill. In addition, as mentioned above, the advantages of billing charges on monthly bills may stimulate the creation of innovative product and service offerings to satisfy additional consumer demand. Without the services offered by billing clearinghouses, consumers would not have access to the full range of competitive choices of providers and of types of services that are currently available and they would not have the

convenience of paying for all of their telecommunications services on one monthly bill with one check.

A. **Counterbalance LEC Market Power**

Although one goal of the Telecommunications Act of 1996 was to create competition in the local telephone market, unfortunately, progress has been slow in developing vigorous competition with incumbent LECs. As a result, most LECs continue to exercise monopoly power in the local markets – which includes monopoly control over consumers’ local phone bills. LECs are not required (by statute or regulation) to provide billing or collection services for any company or service provider – the FCC has recognized that the carriers “have wide latitude to decide for whom they will provide such service, the terms under which they will provide service, and the grounds under which they will discontinue providing service to customers who refuse to play by the rules.”¹⁷

Because consumer demand for telecommunications and information services continues to grow, however, LECs have already begun to compete in other markets, such as voice mail, paging and cellular services. Most importantly, the regional bell operating companies (“RBOCs”) will likely soon enter the long distance market from which they have been excluded since the AT&T consent decree. Without the competitive pressure of billing clearinghouses, LECs would enjoy monopoly control over a critical competitive tool – access to consumers’ monthly bills – and would have an incentive to use control over that tool to the detriment of its competitors – other service providers. In other words, as LECs begin to enter and compete in new markets, billing clearinghouses can check their ability to keep competitors’ charges off the monthly bill and thus use their control over the local bill as a way to leverage their competitive position into other markets.

I. **Anti-Competitive Dangers of Overreaching**

¹⁷ Prepared Statement of Lawrence E. Strickling at 3.

Billing clearinghouses thus play several roles that are critical to fostering vigorous competition and to creating new markets for innovative telecommunications and information products and services. To perform those functions, however, it is essential that billing clearinghouses have access to consumers' local telephone bills. Thus, when designing safeguards to protect consumers from cramming, Congress, the FTC, the FCC and the states must not allow access to the LEC bill to become so restricted that this pro-competitive function is undermined or eliminated. Instead, it is important to recognize the tension between restricting access to consumer bills enough to protect against cramming and other abusive practices, but not so much as to jeopardize the ability of billing clearinghouses to foster competition in the marketplace.

Although this risk may seem remote in the abstract, recent actions by several LECs already signal a willingness to reduce or eliminate competitors' access to consumers' local phone bills. The starkest example is the recent announcements by BellSouth, USWest, Bell Atlantic, GTE and others of a moratorium on allowing charges for new services to gain access to their LEC bills. In some cases, these may be temporary measures implemented only as a short-term fix to protect consumers from cramming. However, the prospect that LECs could unilaterally restrict access to consumers' local phone bills for competing service providers also raises the possibility of creating serious anti-competitive consequences. In light of the pivotal role billing clearinghouses play in promoting competition in the market for telecommunications services, it is critical that measures to address the cramming problem do not sweep so broadly as to undermine the strong pro-competitive, pro-consumer role played by billing clearinghouses in the marketplace. As government and industry consider safeguards to protect consumers from cramming, it is critical not to overreach or to implement solutions that will be more anti-consumer in the long run than the problem they were designed to resolve.

I. Principles to Guide Anti-Cramming Measures

In light of the anti-competitive risks associated with measures designed to combat cramming, we would offer the following three principles to safeguard against solutions that overreach or that tilt the competitive balance in ways that are neither wise nor fair to competitors. In evaluating these safeguards, and perhaps others, it is important to recognize that LECs occupy a unique position in the market – they are responsible for billing consumers directly, they compete with billing clearinghouses in the market for billing services and they compete with other service providers in the markets for voice mail, paging and other related services. These principles, outlined below, will guarantee a level playing field in the market and ensure that consumers are adequately protected from cramming.

A. Equal Protection for Consumers

From the consumer’s perspective, cramming is harmful no matter what entity is responsible. Therefore, one principle to guide anti-cramming measures should be guaranteeing that consumers receive the same level of protection whether the service is offered by a LEC, a LEC affiliate or a competing provider. To achieve that goal, policymakers should ensure that the same standard is applied to every telecommunication or related service that appears on the local phone bill – whether the service is offered by a competing provider or the LEC itself. Thus, if a LEC determines that, for example, five consumer inquiries per thousand is the threshold level for identifying crammers, then that threshold must be applied to all of the services it sells as well as those of its competitors. Similarly, if a LEC determines that competing voice mail service providers will be cut off from the local bill for three months of non-compliance with the anti-cramming threshold, then that same rule must be applied to voice mail services offered by the LECs. This is the only way to guarantee that all consumers receive equal protection against the abuses of cramming.

One recent example illustrates the importance of ensuring that LECs apply the same anti-cramming standards to their own competing services that they apply to their competitors. The California PUC’s Office of Ratepayer Advocacy (“ORA”) alleged that Pacific Bell (“PacBell”)

pressured its representatives to sell callers expensive service options on all calls, including calls where the caller did not inquire about new or additional services.¹⁸ Further, the ORA charged that PacBell misled customers into thinking that optional service packages were part of basic service and attempted to sell costly options to Lifeline customers.¹⁹ Whether or not these charges are proven conclusively, the example highlights the need to ensure that consumers receive the same level of protection from cramming whether the crammer is a LEC, a LEC affiliate or a competitor.

A. Non-Discrimination Against Competing Service Providers

The LEC Anti-Cramming Guidelines vest considerable power and discretion with the local telephone companies in deciding which charges from competing service providers can appear on the local telephone bill – and which cannot. As discussed above, this can be a “life or death” decision for many smaller competitive service providers. In some instances, this discretion may enable the local telephone company to screen out some providers on the grounds that they generate consumer cramming complaints. However, in instances where the LEC is seeking to compete in the same markets as those service providers, empowering the LEC with this discretion poses potential anti-competitive risks. LECs seeking to enter the market for paging or for voice mail services would have an incentive to prevent their competitors from access to a very powerful competitive tool – the consumers’ local telephone bill – to compete with the LEC in that market. Policymakers must ensure that LECs cannot confer upon themselves unfair competitive advantages to the detriment of their competitors, consumers and competition. One minimum protection against that threat is to ensure that anti-cramming protections must be applied equally to LECs that control the bill but also compete in selling other

¹⁸ Cal. Ratepayer Advocate Asks PUC to Act on PacBell Market ‘Abuses,’ *Communications Daily*, June 15, 1998.

¹⁹ *Id.*

services to consumers; this will prevent the LECs from keeping their competitors' charges out of consumers' local phone bills.

For example, many expect the first RBOC will be allowed to begin offering long distance service soon -- perhaps before the end of this year. As the LECs begin to compete in the long distance market they will have an economic incentive to use every competitive tool at their disposal -- including the powerful tool of access to the LEC bill -- to support and promote their entry into a new market that is already fiercely competitive. In other words, as the RBOCs enter the long distance market, there is a risk that they will use their monopoly control over the local phone bill to promote their own long distance service at the expense of their competitors and to the detriment of vigorous competition. A few examples highlight this risk. First, in the "slamming" context, LECs are offering to "freeze" consumer's choice of long distance carrier, ostensibly to ensure that the consumer will not be switched to another carrier without the consumer's consent. Unfortunately, undoing a so-called "preferred carrier" or "PC" freeze requires diligence on the part of the consumer and may serve as a barrier to making a legitimate switch. This barrier to switching may create a significant competitive advantage for the RBOCs once they begin to provide their own long distance service; the LEC potentially could use a request to undo a freeze as a marketing opportunity for its own services.

A second example demonstrates the risk of LECs leveraging their monopoly control to gain power in new markets where they are offering the same type of services as those billed through clearinghouses. BellSouth is covered by the recent FCC guidelines that telecommunications carriers must follow to safeguard customer information. When the FCC required carriers to obtain permission before using customer records to market products or services not covered by existing service relationships, BellSouth supported the measure and stressed to consumers that "information on your telephone account is valuable and in great demand in the fiercely competitive telecommunications marketplace."²⁰ BellSouth assured

²⁰ BellSouth Works to Protect Customer Interests, *Communications Billing Report*, June 12, 1998.

consumers that it was protecting that confidential information. BellSouth, however, reportedly encouraged customers to grant permission to BellSouth to use that same information for marketing purposes. Customers agreeing to grant permission could receive information on services and packages, and be entitled to savings on bundled services including local telephone service, wireless or cable television entertainment, and wireless service and Internet access.²¹ When considering solutions to the problem of cramming, it is critical to guarantee that the LECs cannot leverage their control over the local phone bill into an unfair competitive advantage over their rivals in the market for other services.

A. **Functional Regulation of Billing and Collection Services**

In addition, when crafting protections for consumers against cramming, it is important to recognize that the LECs compete directly with the billing clearinghouses for the aggregation and consolidation function of billing and collection services. In other words, service providers either contract with the billing clearinghouses for their charges to appear on local phone bills or they contract directly with the local telephone companies. In this important respect, LECs compete directly with the billing clearinghouses. Policymakers must ensure that anti-cramming measures are applied equally to all entities that perform the billing consolidation function – whether they are common carriers or billing clearinghouses. Only by employing this principle of functional regulation can Congress guarantee that no competitor suffers an unfair disadvantage or handicap under more strict anti-cramming standards.

I. **Conclusion**

Cramming represents a serious anti-consumer practice and a challenge for government and industry to police and to prevent. Government enforcement actions and industry guidelines and standards of practice have gone a long way toward raising awareness of the problem among

²¹ *Id.*

consumers as well as within the industry. In addition, the billing clearinghouse industry has made great strides toward identifying problem carriers and working with them to resolve potential cramming concerns before they reach a critical level. In cases where we are not able to correct the problem, billing clearinghouses are taking decisive action -- even terminating relationships with our clients altogether. LECs have also begun to track service providers that generate consumer cramming complaints and to cut off their access to the local phone bill. In short, the entire industry has a strong interest in implementing safeguards to prevent cramming and to protect consumers.

In designing and implementing these anti-cramming measures, however, it is important to recognize the tension inherent in devising a comprehensive solution. On the one hand, a solution must prevent the unimpeded access to the LEC bill that allows unscrupulous providers to engage in cramming. LECs and billing clearinghouses must continue to monitor and screen providers to protect consumers. Yet, on the other hand, competitive service providers and billing clearinghouses must maintain the ability to have their charges appear on the LEC bill. Access to the LEC bill cannot be eliminated or restricted so much that legitimate service providers are prevented from competing because they cannot bill their charges via the LEC bill. Without the competitive pressure from these service providers and by the billing clearinghouses, the market for telecommunications and related products and services would be less competitive and more concentrated and consumers would pay higher prices and have fewer choices. Crafting or implementing solutions that over-correct or overreach runs a serious risk of restricting or eliminating a critical source of competition in the market -- whether the solutions are imposed by Congress, the FCC, the states or the LECs -- and of undermining the pro-competitive, pro-consumer benefits that billing clearinghouses and competitive service providers create in the market.

Until there is real competition in the market for local telephone service, LECs will maintain monopoly control over access to consumers' monthly telephone bills. Because many smaller competitors depend on access to consumers' local phone bills, it is essential to preserve

their access to LEC bills in order to maintain and promote competition in other markets that depend on the LEC bill for their billing and collection. Although the FCC expected competition to discipline LEC exercise of monopoly power over local telephone bills when it deregulated billing, the FCC did not and could not have envisioned the variety of telecommunications and information products and services that have grown in the last decade and that currently depend on access to the LEC bill for their competitive viability. Competition in the market has brought a proliferation of both innovative new products and a wide variety of new services available in the telecommunications market, as well as new companies offering those products and services. The local telephone billing system serves many more companies and products and services than it ever did in the past. While this has created dangers in the form of cramming, it has also created opportunities for new and valuable services to be created and to find a place in the market.