

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"))	CG Docket No. 11-116
)	
Consumer Information and Disclosure)	
Truth-in-Billing and Billing Format.)	CG Docket No. 09-158
)	
)	CC Docket No. 98-170

COMMENTS OF ROMAN LD, INC.

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Roman LD, Inc. ("Roman"), a relatively new interexchange carrier entrant into the telecommunications industry that relies on incumbent local exchange carrier ("ILEC") billing services, comments on the Commission's proposed rules to prevent "cramming" - the "placement of unauthorized charges for or in connection with telephone service" - in this proceeding.¹ Roman enthusiastically supports the Commission's efforts to institute additional consumer protections against the practice of cramming. Yet provisions allowing third party billing entities to unilaterally block all third-party charges for common carriers opens the door to anti-competitive behavior, and could ultimately deprive the public from a viable, proven billing option with no countervailing public benefit. Such provisions should not be adopted.

I. INTRODUCTION

Roman, though a relatively new entrant into the interexchange market in 2010, was

¹ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116, *Consumer Information and Disclosure*, CG Docket No. 09-158, *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 11-106 (rel. July 12, 2011) ("NPRM").

launched with the benefit of long-standing telecommunications industry experience by its staff and investors. The Company offers presubscribed interexchange service to residential and small-to-medium sized subscribers. Now operating in several states, with the intent of pursuing a nationwide foot print, Roman relies on ILEC billing services through a third party billing agent.

Roman's decision to utilize ILEC billing services was based on previous experience with ILEC billing and the benefits to subscribers and the Company associated with this practice. Subscribers have expressed their preference for the convenience of combined local and interexchange telecommunications service billing. Further, ILEC billing has enabled Roman to mitigate billing costs, which has been particularly beneficial as an emerging company. And Roman appreciates the significant oversight imposed by ILEC billers and their billing agent to ensure the veracity and accuracy of charges to appear on subscriber invoices and strict billing procedures to protect consumers.

Roman also realizes that left unchecked, ILEC billing can pose a potential anti-competitive threat to ILEC interexchange service competitors, and any common carrier that relies on ILEC billing. Adoption of the charge blocking rule exacerbates that threat in the absence of additional protections as ILECs may engage in anti-competitive behavior geared to win-back former interexchange subscribers.

The Commission's proposed rules are appropriate to the extent that the Commission does not inadvertently give ILECs the ability to encourage charge blocking as a competitive strategy against interexchange carriers like Roman that have established relationships with subscribers yet rely on ILEC billing. Common carriers are already subject to stringent Commission account verification and billing regulations, and should not now fear the prospect of another opportunity for ILEC anti-competitive behavior that would precipitate the elimination of ILEC billing as a

viable option. Roman urges the Commission to forego adoption of third party charge blocking requirements altogether.

II. THE CHARGE BLOCKAGE PROVISION IMPROPERLY PAINTS ALL ENTITIES THAT ENGAGE IN ILEC BILLING WITH THE SAME BROAD BRUSH.

The Commission has made clear that its intent through this proceeding is to “assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills.”² As the Commission states, many consumers do not realize that they are victims of cramming, necessitating additional protections. Yet the Commission’s focus in this proceeding should appropriately remain on protecting consumers against cramming. The proposed rules should not inadvertently limit, if not preclude, common carriers and their subscribers from availing themselves of the benefits of ILEC billing under a broad brush approach that treats common carriers and other third-party vendors alike.³

Clearly, common carriers and third-party vendors that utilize billing aggregation are not similarly situated either in their relationship with subscribers, assumption of regulatory obligations, or their relationship with ILEC billing entities. A key fundamental difference between common carriers and third party vendors resides in the nature of their relationship with subscribers. The desire to attract and retain long-term subscribers guides common carriers to meet subscriber need and satisfy their subscribers. Though Roman does not dispute there are instances of common carriers that may engage in cramming as the Commission notes, whether unintentionally or otherwise, common carriers risk losing subscribers altogether if imposing charges for service that are not otherwise verified as approved by subscribers.

² *NPRM* at 1.

³ Though this does not appear to be the Commission’s intent, there are those who would suggest otherwise. *See Virginia SCC Comments* at 4.

For the minority of disreputable common carriers who intend on defrauding the public, these providers also remain squarely subject to existing regulations intended to protect consumers against unauthorized charges as addressed by the Commission; Truth-in-Billing⁴ and Account Verification among others. This factor too differentiates common carriers providers from non-telecommunications third party vendors who are not otherwise subject to Commission rules. That common carriers are subject to federal and state regulation, places their operations in far greater jeopardy if engaged in wrong-doing than other third party vendors.

Moreover, interexchange common carriers are also competitors of ILEC who bill on their behalf. This competitive relationship can, and has, promoted aggressive ILEC rule interpretation by giving ILEC billers the opportunity to actively undermine their competitors in favor of the ILECs own interexchange services.

As proposed, applicability of the broad third party charge blocking provision does not distinguish between common carriers and third party vendors, placing only common carriers at real risk of anti-competitive ILEC behavior that stands to eliminate ILEC billing as a viable option altogether.

III. THE PROPOSED BLOCKING RULE EXACERBATES THE POTENTIAL FOR ILECS TO ENGAGE IN ANTI-COMPETITIVE BEHAVIOR.

Proposed Section 64.2401(f) establishes that

Common carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's website.

Applicability of this provision to ILEC billers heightens concern over potential anti-competitive threats to their common carrier billing customers. Under the Proposed Rules, ILEC

⁴ See, e.g. *NPRM* at para. 45.

billers are accorded the opportunity to effectively foreclose third party billing options by allowing, if not pursuing, unsuspecting subscribers to believe they are precluding only *ad hoc* third party vendor charges, when in actuality subscribers would be precluding *all* third party billing, including legitimate billing from interexchange carriers. Armed with this option, the ILECs could preclude companies like Roman from providing interexchange services to an ILEC's subscriber altogether. Though this is not the expressed intent of the rule, the net result is the same. ILECs could encourage their own subscribers to have all third party charges blocked with impunity in favor of subscribing to the ILEC's interexchange services, while simply claiming compliance with the proposed blocking rule. Rather than protecting consumers, the proposed blocking provisions would harm them by precluding legitimate third party billing altogether.

Roman has already experienced instances where ILECs have sought to win-back subscribers by misleading subscribers into believing that they have been slammed in an effort to have the subscriber cancel a legitimately authorized service. An authorized subscriber claims that an account was transferred without authority, after inquiring about an unrelated charge appearing on the subscriber's invoice upon prompting by an ILEC representative. Upon verification, it has been determined that the subscription and associated charges were indeed valid, but that commission-based representatives mislead the subscriber into believing that the charge – subscription to Roman's service - was unauthorized, offered to reverse the charges, and to transfer the account to the ILECs own service. The proposed blocking rule exacerbates this very possibility.

IV. THE PROPOSED BLOCKING RULE SHOULD NOT BE ADOPTED FOR PRESUBSCRIBED SERVICES.

The proposed blocking provision is so broad as to effectively create an incentive for

preclusion of any form of billing for common carriers. Blockage of “third-party charges” as an undefined term can apply to any charge, including legitimate service charges. Combined with an irresistible ILEC desire to undermine competitors in favor of their own interexchange services, the proposed rule could effectively put an end to ILEC common carrier billing altogether.

Rules governing primary interexchange carrier freezes (“PIC Freeze”) already provide ample protection to consumers to ensure that their accounts are not switched. Though the proposed blockage rule is intended to address specific *ad hoc* charges, the proposed rule serves as a second, more inclusive and severe PIC Freeze requirement because of its broad language. Subscribers may already avail themselves of PIC Freezes to preclude the possibility of unauthorized carrier transfers, while creating a second line of defense when subscribers do wish to change carriers by obligating interexchange providers to contact subscriber LECs directly. Existing PIC Freeze rules currently ensure that subscribers will only receive charges from their presubscribed interexchange carrier directly or through ILEC billing. No additional subscriber protection is therefore realized under the charge blocking provision.

V. IF THE PROPOSED BLOCKING RULE IS ADOPTED, IT SHOULD EXPLICITLY BE ADOPTED IN A COMPETITIVELY-NEUTRAL MANNER.

In light of the significant potential for aggressive anti-competitive ILEC biller interpretation of the proposed broad charge blocking provision to undermine competitors, if the Commission pursues adoption of the rule, Roman urges the Commission to ensure that the rule is adopted in a competitively-neutral manner. The Commission should ensure that ILEC billers cannot incent subscribers to unwittingly block party legitimate interexchange carrier charges while requiring ILEC billers to provide subscribers with an unambiguous and competitively-neutral explanation of the implications of selecting charge blocking.

The proposed charge blockage provision shares characteristics with existing Commission PIC Freeze regulation, which offers an effective approach for ensuring competitive-neutrality. Section 64.1190 *inter alia*:⁵

- Is clear as to its applicability – preventing unauthorized account transfers;
- Is clear as to its purpose;
- Explicitly compels implementation in a competitively-neutral manner;
- Requires “explanation, in clear and neutral language,” of what the subscriber’s election will accomplish and what services are included;
- Provides clear explanation of the process for implementation and removal of the freeze; and
- Requires affirmative subscriber action and documented evidence of the subscriber’s election;

As proposed the current charge blockage provision offers none of these protections. If the Commission adopts the proposed charge blocking provisions, it should also adopt additional provisions consistent with those residing in the PIC change rules. Although such added protections will not totally removing the potential for anti-competitive behavior, they do provide additional, actionable protections against such behavior that are at the root of Roman’s concerns with the change blockage provision.

VI. CONCLUSION.

ILEC billing has provided the public and many interexchange service providers with a proven, effective, and convenient means for billing subscribers. Commission efforts to protect consumers from “cramming” should not inadvertently preclude this practice. As proposed, the charge blocking rule in Section 64.2401(f) gives ILEC billers the ability to impose anti-competitive billing restrictions for legitimate charges with impunity, consistent with actions already experienced by Roman pertaining to account transfers. Common carriers maintain a unique relationship with their subscribers not shared by any other third party vendor and

⁵ 47 C.F.R. §64.1190.

moreover, subject to strict regulation. As currently proposed, the blocking rules expose common carriers to anti-competitive with no countervailing benefit to the public. For the foregoing reasons, Roman urges the Commission to forego adoption of the charge blockage rule. Alternatively, Roman urges the Commission to impose the same safeguards resident in the PIC Freeze rules to ensure competitively-neutral applicability.

Respectfully submitted this 24th day of October, 2011.

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