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	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF THE COALITION FOR A COMPETITIVE TELECOMMUNICATIONS MARKET

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SUMMARY OF COMMENTS OF THE CCTM

The Coalition for a Competitive Telecommunications Market ("CCTM") is comprised of various small providers of presubscribed 1+ long distance services. CCTM members generally lack the embedded infrastructure, network, and billing platforms operated by larger carriers and, consequently, utilize third-party billing services as an important component of providing cost-effective presubscribed 1+ telecommunications services.

CCTM members strongly oppose any proposed Federal Communications Commission ("FCC" or "Commission") action to prohibit or restrict third-party billing, especially with respect to third-party billing services provided to presubscribed 1+ telecommunications providers.

The Commission does not have authority under Title II of the Communications Act of 1934, as amended (the "Act"), to prohibit or regulate third-party billing services. The Commission itself has concluded, on several occasions, that third-party billing is not a communications service and is not subject to regulation under Title II of the Act. The Commission should not and may not act against this well established precedent by seeking to impose an outright ban on the provision of third-party billing services.

With respect to presubscribed 1+ providers, the record clearly does not support prohibiting or restricting third-party billing services under the FCC's Title I ancillary authority. Exercise of Title I ancillary jurisdiction requires a finding that regulations are necessary to achieve a statutory responsibility. Current regulatory requirements (*e.g.*, third-party verification procedures) and voluntary industry practices (*e.g.*, proactive refund policies) already address many of the cramming issues identified in the record, making further restrictions or prohibitions to third-party billing under Title I unnecessary and unjustifiable with respect to presubscribed 1+

carriers. If the Commission should find that restrictions or prohibitions on third-party billing are permitted under Title I, these potential regulations should not apply to presubscribed 1+ carriers.

An attempt to prohibit third-party billing services would likely violate the First Amendment. Specifically, such a proposed action would be more extensive than necessary, ignoring countless other obvious and less extreme alternatives. Consequently, an attempted ban of third-party billing would likely fail the third prong of the Central Hudson Test and result in an unconstitutional restriction on commercial speech.

A ban on third-party billing for communications services would have the undesired effect of reducing communications services competition, particularly competition in presubscribed 1+ long distance markets, and would adversely impact millions of American consumers. Furthermore, a ban of third-party billing would lead to fewer choices, higher prices, reduced competition, and would effectively eliminate small and mid-tier communications service providers and resellers which utilize third-party billing to provide presubscribed long distance services. This would destroy, overnight, hundreds of businesses, resulting in the layoffs of tens of thousands of employees for those businesses and the service providers they utilize.

CCTM members generally do not object to offering an option for consumers to request blocking of charges from non-carrier services or non-presubscribed telecommunications services (*e.g.*, dial-around services). However, blocking of charges for presubscribed 1+ communications services should be subject to an independent third-party verification process similar to current FCC carrier change requirements. The Commission has authority to implement such a requirement under Title II because blocking of presubscribed 1+ charges effectively implements a change to a consumer's telecommunications service by leaving a subscriber without access to (non-LEC) third-party 1+ long distance services.

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COMMENTS OF THE COALITION FOR A COMPETITIVE TELECOMMUNICATIONS MARKET

The Coalition for a Competitive Telecommunications Market ("CCTM"),[1] by its undersigned attorneys, respectfully submits the following comments in response to the Federal Communication Commission's ("FCC's" or "Commission's") *Notice of Proposed Rulemaking* ("*NPRM*") released on July 12, 2011 in the above-captioned proceeding.[2]

I. INTRODUCTION

The CCTM is comprised of various small providers of presubscribed 1+ long distance services serving predominantly small business and residential consumers. CCTM members are

[1] The CCTM is currently comprised of Legent Communications Corporation and the following companies: Access Long Distance Inc.; Affordable Long Distance LLC; LoTel, Inc.; Long Distance Access Inc.; Long Distance Consolidated Billing Company; Long Distance Savings; Online Savings, Inc.; and Twin City Capital, LLC.

[2] *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming");Consumer Information and Disclosure; Truth-in Billing and Billing Format*, Notice of Proposed Rulemaking, CG Docket No. 11-116, CG Docket No. 09-158, CC Docket No. 98-170, 26 FCC Rcd 10021, 76 FR 52625 (FCC 11-106) (rel. July 12, 2011).

committed to the advancement of a competitive telecommunications marketplace in the U.S. and strongly oppose unnecessary or unduly burdensome regulatory measures.[3]

As resale telecommunications carriers, CCTM members generally operate as small businesses lacking the embedded infrastructure, network, and billing platforms operated by larger carriers. These resale telecommunications carriers often utilize various third-parties to provide assistance with critical components of their business operations and to increase operational efficiencies. A key component in CCTM members' operations is the ability to bill an end-user subscriber for presubscribed 1+ long distance services on a subscriber's local phone bill through third-party billing services ultimately provided by various local exchange carriers ("LECs"). Direct billing of customers (as opposed to third-party billing) requires potentially costly specialized software to generate bills, is time consuming, and generally consumes resources that would negatively impact the competitiveness of resale telecommunications providers. Third-party billing aids in reducing these administrative costs for 1+ providers, which are ultimately passed on as cost savings to end-user subscribers. Accordingly, third-party billing is important in ensuring that CCTM members and other 1+ providers can continue to provide low cost, competitive and high quality presubscribed 1+ telecommunications services to consumers.

Presubscribed 1+ service providers, including the CCTM members, already comply with numerous regulatory requirements that are designed to help ensure that customers only receive properly authorized telecommunications services. Specifically, CCTM members: (i) are subject to the regulatory oversight of both the FCC and various state public utility commissions ("PUCs"); (ii) must obtain PUC authorizations in order to operate in most states; (iii) are

[3] The CCTM has participated in Commission proceedings on competitive 1+ issues in the past.

required to comply with mandated third-party verification procedures before being able to provide authorized 1+ services to a customer; and (iv) are required to have tariffs on file in many states. Additionally, many 1+ providers have implemented voluntary industry practices to further ensure a positive customer experience. For example, presubscribed 1+ customers: are often sent welcome letters describing the services to which they have presubscribed; are provided with flexible terms of service that do not involve long term contracts (*i.e.*, cancel anytime); and benefit from proactive refund and cancellation policies.[4] These requirements and practices make it less likely that presubscribed 1+ providers are engaged in unlawful conduct, such as cramming, in connection with third-party billing.

II. AN OUTRIGHT PROHIBITION OF THIRD-PARTY BILLING EXCEEDS THE COMMISSION'S TITLE II AUTHORITY, IS UNNECESSARY WITH RESPECT TO PRESUBSCRIBED TELECOMMUNICATIONS SERVICES, AND LIKELY VIOLATES THE FIRST AMENDMENT

The CCTM members are strongly opposed to any proposed FCC action to prohibit or restrict third-party billing services, especially with respect to third-party billing services provided to providers of presubscribed 1+ telecommunications services. An outright prohibition of third-party billing services to presubscribed carriers would exceed the Commission's authority under Title II of the Communications Act of 1934, as amended (the "Act"). Furthermore, Title I ancillary authority regulation of third-party billing services provided to presubscribed carriers is both unjustifiable and unnecessary. An outright ban of third-party billing services is also likely to violate the First Amendment.

[4] Furthermore, LECs also have their own aggressive pro-consumer refund/adjustment policies and have established third-party cramming overview processes with set complaint thresholds before billing services are suspended.

A. Third-Party Billing is Not Subject to Commission Regulation Under Title II of the Communications Act

The Commission does not have authority under Section 201(b) of the Act,[5] to regulate or ban third-party billing services. In fact, the Commission deregulated third-party billing services in 1986 by clearly concluding that "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."[6] In reaching this carefully reasoned conclusion, the Commission explained that "billing and collection is a financial and administrative service" and, when performed by LECs for an "unaffiliated carrier[,] is not a communication service for purposes of Title II of the Communications Act."[7] Furthermore, the *Detariffing Order* proclaimed the Commission's decision to be "sound from a policy as well as a legal standpoint" and that such a finding would "serve the interests of subscribers by holding down the carriers' administrative costs of providing telephone service."[8]

The Commission has acknowledged and upheld this well established legal precedent several times.[9] In the *Truth-in-Billing Order*, the Commission promulgated general carrier billing policies under its authority to "regulate the manner in which a carrier bills and collects for its own interstate offerings" but also further clarified that "carrier billing or collection for the offering of another unaffiliated carrier is not a communication service for purposes of Title II of

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[5] 47 U.S.C. § 201(b).

[6] *Detariffing of Billing and Collection Services*, Report and Order, CC Docket No. 85-88, 102 F.C.C.2d 1150, 1168, recon. denied, 1 FCC Rcd 445 (1986) ("*Detariffing Order*").

[7] *Id.* at 1169.

[8] *Id.* at 1177 – 1178.

[9] *See, e.g., Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, 7506 - 7507 (1999) ("*Truth-in-Billing Order*"); *See also, In re Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act*, Memorandum Opinion and Order, 8 FCC Rcd 8697 (1993) ("*Sprint Telemedia Order*").

the Communications Act."[10] In the *Sprint Telemedia Order*, the Commission denied a petition, which sought a ruling that a carrier's refusal to provide billing and collection services for unaffiliated non-carrier information providers was in violation of the Act, because the "Commission lacks Title II jurisdiction over the billing and collection service at issue because it is not a common carrier service[.]"[11] In another decision that was upheld on appeal, the Commission refused to initiate a rulemaking to re-regulate carrier billing and collection services, specifically noting again that it had already established that "billing and collection services provided by local exchange carriers are not subject to regulation under Title II of the Act."[12] The Commission should not and may not act against this well established precedent by seeking to impose an outright ban on the provision of third-party billing services.

B. The Commission's Ancillary Authority Does Not Support Banning Third-Party Billing for Presubscribed Telecommunications Services

The Commission has asserted that it may have ancillary authority under Title I of the Act to regulate third-party billing services, but has consistently declined to assert such jurisdiction.[13] Should the Commission decide to exercise its ancillary authority, any restrictions or prohibitions on third-party billing should not be extended to billing for presubscribed 1+ long distance providers. If the Commission adopts any restrictions to third-party billing under its ancillary

[10] *Truth-in-Billing Order* at 7507.

[11] *Sprint Telemedia Order* at 8702.

[12] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, 6 FCC Rcd 3506, 3509 (1991), appeal denied sub nom. *Capital Network System, Inc. v. FCC,* 3 F.3d 1526 (D.C. Circuit 1993).

[13] *NPRM* at para. 85; s*ee also Detariffing Order* at 1169 – 1171; *Sprint Telemedia Order* at 8700 – 8702.

jurisdiction, it should only do so with respect to non-carrier third-parties that are not already subject to the Commission's rules.[14]

The Commission "may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission's general jurisdictional grant under Title I covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."[15] In other words, regulations promulgated under ancillary jurisdiction must be <u>necessary</u> to ensure the achievement of the Commission's statutory responsibilities.[16] The Commission's statutory responsibility under Section 201(b) includes "protecting consumers from unjust or unreasonable charges and practices."[17] In the context of cramming, the Commission seeks to "assist consumers in detecting and preventing <u>unauthorized</u> charges on their telephone bills."[18] With respect to presubscribed carriers, the promulgation of additional regulations, under Title I ancillary authority, to regulate third-party billing is not necessary to achieve the statutory responsibilities of Section 201(b).

[14] CCTM members are generally opposed to an outright ban on third-party billing for any type of service provider. However, to the extent that restrictions on third-party billing must be implemented, the CCTM believes that the record clearly does not support extending such restrictions to presubscribed 1+ telecommunications providers.

[15] *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *American Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

[16] *See The Public Service Commission of Maryland and Maryland People's Counsel Applications for Review of a Memorandum Opinion and Order By the Chief, Common Carrier Bureau Denying The Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services; The Public Utilities Commission of New Hampshire Petition for Rule Making Regarding Billing and Collection Services*, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4005 ("Title I permits us to exercise our ancillary jurisdiction over communications services if such regulation is 'necessary to ensure the achievement of [our] ... statutory responsibilities'"), citing *Computer and Communications Industry Assn. v. FCC*, 693 F.2d 198, 213 (D.C. Circuit 1982), cert. denied sub nom., *Louisiana PSC v. U.S.*, 461 U.S. 938 (1983), citing *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

[17] *NPRM* at para. 87 (citing 47 U.S.C. §201(b)).

[18] *NPRM* at para. 1 (emphasis added).

First, additional regulation is unnecessary as the billing practices of presubscribed carriers are already subject to the Commission's direct regulation under Title II of the Act. Unlike other third-party vendors, presubscribed 1+ carriers have direct relationships with their customers that are established through strict regulatory requirements. Specifically, presubscribed carriers are subject to detailed carrier change requirements, which include verifications obtained by independent third parties, in order to become a customer's authorized long distance provider before providing and billing for authorized long distance charges.[19] Presubscribed 1+ carriers invest significant resources towards obtaining customers, ensuring carrier change requirements are met, and maintaining customer satisfaction. The significant costs and regulatory hurdles involved in acquiring this direct (and regulated) relationship—unlike pay-per-call or dial-around services—provides a strong disincentive against engaging in cramming practices which would alienate presubscribed long distance customers.[20] Furthermore, the Commission's existing truth-in-billing rules,[21] which the Commission has stated apply to presubscribed carriers even when utilizing third-party billing services,[22] already requires charges from presubscribed carriers to be separated out and clearly described so that customers can ensure the charges are authorized.[23] Unlike non-carrier charges, which may be for unrecognizable services, customers are more easily

[19] *See* 47 C.F.R. §§ 64.1100 *et seq.*

[20] Presubscribed 1+ carriers are subject to direct FCC enforcement actions for violations of the Commission's requirements, which act as a strong deterrent against cramming practices.

[21] *See* 47 C.F.R. §§ 64.2400 *et seq.*

[22] *Truth-in-Billing Order* at 7506 - 7507 ("even where an interexchange carrier (or other carrier) uses the billing and collection services of a LEC or other third-party billing agent, the interexchange carrier still bears the responsibility of ensuring that such charges appear on the bill remitted to the consumer in a manner that complies with the principles set forth in this Order.").

[23] *See NPRM* at para. 45 ("The Commission adopted this requirement to "enhance consumers' ability to review individual charges contained in their telephone bills and detect unwarranted charges or unauthorized changes in their service arrangements.") (citing *Truth-in-Billing Order* at 7510).

able to recognize and verify charges incurred for presubscribed long distance services. Essentially, the Commission's existing Title II regulations already address many of the cramming issues it has identified, making further restrictions or prohibitions to third-party billing under Title I unnecessary and unjustifiable (*i.e.*, not necessary to ensure achievement of the Commission's statutory responsibilities) with respect to presubscribed carriers.

Finally, the record does not demonstrate that there is a cramming issue with respect to presubscribed 1+ carriers. To illustrate the perceived cramming issue with respect to long distance carriers, the *NPRM* cites to four recent Notices of Apparent Liability for Forfeiture ("NALs") that assess proposed forfeitures against long distance resellers:

> [T]he Commission released four Notices of Apparent Liability for Forfeiture ("NALs"), proposing an aggregate of $11.7 million in forfeitures against a number of long distance resellers for apparent cramming violations. The actions came in response to consumer complaints to the Commission, in which the complaining parties stated that they did not sign up for the service in question, had no contact with the reseller prior to being billed for the service, and never used the service... In each NAL, the Commission concluded that the reseller apparently operated a constructively fraudulent enterprise, in which it billed consumers for services that they never ordered or authorized.[24]

However, the *NPRM* fails to point out the very significant distinction that all of the long distance resellers in the NALs are providers of dial-around long distance services and <u>not</u> providers of presubscribed 1+ services.[25] Unlike presubscribed providers, dial-around service providers do not generally have direct ongoing relationships with customers, and are not subject to the Commission's carrier change or independent third-party verification requirements.[26] Because of

[24] *NPRM* at para. 21.

[25] *See Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, FCC-11-89 (rel. Jun. 16, 2011); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, FCC-11-91 (rel. Jun. 16, 2011); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, FCC-11-90 (rel. Jun. 16, 2011); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, FCC-11-88 (rel. Jun. 16, 2011).

[26] *See supra* at 7.

the additional authorization safeguards that presubscribed carriers are required to implement, presubscribed long distance customers are only billed for services that are both ordered and authorized, and the record does not support any conclusion that presubscribed carriers are contributors to the cramming problem.

On the other hand, the record does support a finding that non-carrier providers (in addition to, possibly, dial-around providers) are significant contributors to the cramming problem. The *NPRM* describes that "those engaged in the practice of cramming often use schemes, such as... labeling charges in a way that makes them appear to be associated with a subscribed-to telecommunications service" such as "voicemail" or "web services."[27] Presubscribed long distance carriers do not provide such services and would have no reason to mislabel their charges in such a manner since the presubscribed carriers in fact are "associated with subscribed-to telecommunications services."[28] The *NPRM* also cites to several Congressional investigations and inquiries but fails to indicate whether these investigations or inquiries have determined that (presubscribed) carriers are the parties responsible for cramming charges.[29] Perhaps the most telling evidence that non-carriers are significantly responsible for cramming is the recently enacted state legislation in Vermont which bans <u>non-carrier</u> third-party charges on telephone bills but generally exempts telecommunications carriers.[30] Accordingly, even if the Commission should find that restrictions or prohibitions on third-party billing are

[27] *NPRM* at para. 2, Footnote 5. Additionally, crammers also "offer" services such as electronic fax, web hosting, online gaming and email. *Id.* (citing the press release for "Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands").

[28] Indeed, consumers traditionally expect presubscribed long distance charges to appear on their telephone bills.

[29] *NPRM* at paras. 35 – 36.

[30] *See* 9 V.S.A. § 2466 (as amended); *NPRM* at para 33. Presumably, carriers would have also been prohibited from third-party billing of charges if the state had determined carriers to be a significant contributor to the cramming issue.

permitted under Title I, these potential regulations should not extend to carriers, should especially not apply to presubscribed 1+ carriers, and should only apply to non-carrier providers.[31]

C. Prohibiting Third-Party Charges on Wireline Telephone Bills Would Likely Violate the First Amendment

An FCC attempt to prohibit carriers from including third-party charges on wireline telephone bills would likely amount to an impermissible censorship of speech in violation of the First Amendment.[32] The FCC's *NPRM* recognizes that any attempt to regulate commercial speech will pass First Amendment scrutiny if and only if the government can show: (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest (the "Central Hudson Test").[33]

In this case, the FCC asserts that its substantial interest is to protect consumers from unjust and unreasonable practices by assisting consumers in "detecting and preventing unauthorized charges on their telephone bills."[34] This interest may pass the first prong of the test. An outright ban on third-party billing would certainly prevent unauthorized third-parties from placing charges on telephone bills, possibly surviving the second part of the Central Hudson Test. However, any proposed outright ban would also unnecessarily infringe upon the First

[31] The CCTM is generally opposed to any unnecessary restrictions on third-party billing. However, to the extent necessary, the CCTM believes that the record would only support reasonable restrictions on third-party billing of non-carrier services.

[32] The Virginia State Corporation Commission's recommendation to implement a complete ban on third-party billing as the only way to stop the practice of cramming clearly overlooks the constitutional restraints under which the government must operate.

[33] *Central Hudson Gas & Electric Corp. v. Public Service Commission,* 447 U.S. 557, 566 (1980).

[34] *NPRM* at para. 1.

Amendment rights of LECs and presubscribed 1+ long distance providers to transmit legitimate and authorized billing information of their choosing through the third-party billing process. An outright ban also ignores countless other obvious, less extensive and less extreme alternatives that could accomplish the FCC's objectives without unnecessarily infringing upon the First Amendment.[35] Consequently, an attempted ban of third-party billing would most likely fail the third prong of the Central Hudson Test and violate the First Amendment.

III. PROHIBITION OF THIRD-PARTY BILLING WOULD HAVE DETRIMENTAL EFFECTS ON THE PRESUBSCRIBED TELECOMMUNICATIONS INDUSTRY

A ban on third-party billing for communications services would have the undesired effect of reducing communications services competition, particularly competition in presubscribed 1+ long distance markets, and would adversely impact millions of American consumers. Third-party billing is a valuable service, especially to presubscribed carriers and their customers, and restrictions or prohibitions on such a service would not be in the public interest.

A. Prohibition of Third-Party Billing Negatively Impacts Price, Competition and Consumer Choice in Long Distance Services

Eliminating third-party billing for presubscribed long distance services would negatively impact the industry by reducing competition and consumer choice, increasing prices, and stifling innovation. Smaller telecommunications providers may not necessarily have the financial

[35] An outright ban would be the most extreme, excessive and unnecessary solution to the cramming problem, akin to proposing a ban on roads and highways in order to prevent speeding infractions from occurring. While third-party billing may be the conduit through which cramming infractions occur, it is not the wrongdoer or the cause of the problem. The solution here is not to do what is easiest, and eliminate an important service that facilitates competition in the communications industry. Rather, the solution is to apply effective regulations tailored to the concerns raised in the proceeding. One obvious and less burdensome alternative would be to simply increase enforcement efforts against the actual wrongdoers, a solution that can be implemented under existing regulations and does not require an impermissible restriction on commercial speech.

resources to invest in complex and costly billing systems, or engage in the resource intensive process of direct billing and collecting for services. Since LECs already have billing platforms, and already provide billing and collection services for their own telecommunications products, smaller 1+ resale telecommunications providers are able to leverage these efficiencies through the third-party billing process. These efficiencies lead to cost savings that are passed on to the consumer. Eliminating third-party billing would directly increase costs to consumers since resale carriers would be forced to develop costly alternative billing systems. Such a ban would also most likely force many small telecommunications providers out of the market and, with fewer competitors, there would be less incentive for the remaining larger providers with established billing systems to compete by price or innovation.[36] Ultimately, a ban of third-party billing will lead to fewer choices for consumers in communications services, higher prices, reduced competition and reduced incentive to create innovative products and services.

B. Elimination of Third-Party Billing Would Virtually Eliminate Small and Mid-Tier 1+ Long Distance Providers

An outright ban on third-party billing would effectively eliminate small and mid-tier communications service providers and resellers which utilize third-party billing to provide presubscribed long distance services. This would destroy, overnight, the viability of hundreds of

[36] Eliminating third-party billing of presubscribed long distance services would also serve as a barrier to entry into the presubscribed long distance market. Since billing platforms are costly, only a limited number of major carriers with significant resources and infrastructure would be able to continue providing presubscribed long distance services. Potential new entrants would be effectively barred from the presubscribed market since few if any new competitors would have the incentive or ability to replicate costly carrier billing platforms.

legitimate and closely regulated businesses, resulting in the layoffs of tens of thousands of employees for those businesses and the service providers they utilize.[37]

A thriving industry comprised of small and mid-sized businesses offering long distance and other communications services currently exists in the U.S. Many of these presubscribed long distance providers focus on the low-volume users that are not well served by the major carriers. The service providers for the low-volume users are particularly vulnerable to interruptions in third-party billing. Many of these innovative communications providers are too small to justify their own billing platforms, nor can they justify the relationships with the over 40,000 taxing jurisdictions in the United States in order to allow them to directly bill for services nationwide. A broad ban on third-party billing would have a devastating impact on this communications sector and the services and products it offers. It is not inconceivable that a far reaching proposal to outright ban third-party billing could, overnight, destroy this industry altogether and, with it, tens of thousands of jobs. Such a result is not in the public interest, especially in the current economic climate where the government's role should be to stimulate the economy and job growth.

IV. WHETHER BLOCKING OF THIRD-PARTY CHARGES UPON CONSUMER REQUEST IS MANDATORY OR VOLUNTARY, EXCEPTIONS SHOULD BE MADE FOR PRESUBSCRIBED LONG DISTANCE SERVICES

Many LECs currently offer the option to block third-party charges on telephone bills upon request by the consumer. The CCTM members generally do not object to offering this option (whether mandated or on a voluntary basis) for consumers to request blocking of charges

[37] *See, e.g., NPRM* at Appendix C, para. 8 ("According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.")

from non-carrier services or non-presubscribed telecommunications services (*e.g.*, dial-around services). However, if charges are for presubscribed 1+ communications services, then LECs should not be able to block charges upon request by the consumer unless that request is subject to an independent third-party verification process similar to the current FCC carrier change requirements.[38] To the extent that a consumer is already presubscribed to the long distance services of another carrier, unilateral blocking of charges from that presubscribed carrier should not be allowed.[39] The Commission has authority to implement such a requirement, without implicating the Title II restrictions on third-party billing stated above, because blocking charges from a presubscribed carrier effectively implements a change to the consumer's telecommunications service in violation of the Commission's existing carrier change rules.[40] Consistent with those rules, LECs should be required to obtain independent third-party verification of the subscriber's intent to block third-party charges for presubscribed communications services.[41]

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[38] *See* 47 C.F.R. §§ 64.1100 *et seq.*

[39] Blocking of such charges would effectively leave a subscriber without access to third-party 1+ long distance services and limited to using the LEC's own 1+ offering. Since LECs have unfettered control over third-party billing, thereby placing 1+ resellers at an extreme disadvantage, an appropriate third-party verification process must be implemented to ensure that a subscriber's intent is properly ascertained. Furthermore, such a process is necessary to ensure that anticompetitive incentives do not become a factor for LECs to engage in excessive blocking arrangements.

[40] *See* 47 C.F.R. § 64.1120.

[41] The CCTM also supports a requirement that carriers offering third-party charge blocking must notify customers of this option clearly and conspicuously, as long as such notification also explains that blocking of presubscribed long distance charges effectively changes the customer's long distance carrier and is subject to independent third-party verification.

V. COMMENTS ON OTHER QUESTIONS/PROPOSALS RAISED IN THE *NPRM*

A. Screening of Third-Party Vendors

The *NPRM* seeks comment on whether the Commission should require carriers to screen third-party vendors to ensure that the vendors operate in compliance with relevant state and federal laws.[42] CCTM members generally have no objection to such a requirement for non-carrier third-party vendors, subject to the limitations on Commission authority stated earlier.[43] However, the CCTM members also acknowledge that further FCC requirements in this area are most likely unnecessary as LECs already employ a strict screening and monitoring process, especially for third-party telecommunications carriers. To the extent that the Commission does require carriers to screen third-party vendors to ensure compliance with state and federal law, LECs should be subject to a reasonableness standard to ensure such screening and monitoring does not become a means through which anti-competitive or discriminatory practices can occur (*e.g.*, violating the Commission's carrier change requirements by unilaterally blocking a presubscribed carrier's legitimate and authorized charges).

B. Separating Non-Carrier Charges

The CCTM members generally support a requirement to separate all carrier charges (including usage charges and other fixed charges associated with telecommunications services) from all non-carrier charges on consumers' telephone bills,[44] subject to appropriate consideration of potential First Amendment issues. CCTM members believe that such a practice would help to reduce the likelihood that consumers will believe fraudulent charges are for carrier services, and

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[42] *NPRM* at para. 64.

[43] *See supra* at 3 – 11.

[44] *See NPRM* at para. 45.

would likely benefit carriers by potentially allowing customers to disassociate carriers from the actual non-carrier wrongdoers responsible for cramming.

C. Displaying Contact Information for Vendors and the Commission

The CCTM members generally do not oppose a requirement to include clear and conspicuous disclosure of complaint resolution contact information for all third-party vendors on carrier bills,[45] subject to potential First Amendment considerations. Such information should be concise and potentially limited to the vendor's name and toll-free number. The CCTM members would not oppose requiring clear and conspicuous statements that unresolved complaints may be directed to the FCC. The record supports a finding that carriers have a strong interest in ensuring that customers are satisfied and have liberal refund policies, both of which typically obviates the need for consumers to seek regulatory intervention.[46] Furthermore, requiring private parties to first attempt to resolve complaints independently would free up governmental and regulatory resources, allowing the FCC to focus on other important matters such as enforcement actions against known perpetrators of cramming fraud.

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[45] *See NPRM* at para. 51.

[46] *See, e.g., NPRM* at Footnote 66 (citing California Public Service Commission letter describing California's requirement that consumers direct complaints first to the carrier, and the fact that liberal refund policies obviates the need for consumers to complain to the CPUC).

VI. CONCLUSION

For the aforementioned reasons, the CCTM respectfully requests that the Commission adopt the positions and recommendations set forth herein. Specifically, the Commission should refrain from restriction or prohibition of third-party billing services with respect to presubscribed 1+ long distance services and, if the Commission should decide to implement further restrictions or prohibitions on third-party billing, any proposed regulations should be limited to third-party billing of non-carrier services.

Respectfully submitted,

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