

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENTS OF
THE INTERNET SEARCH OPTIMIZATION COMPANY**

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The Internet Search Optimization Company (“ISO”),¹ by and through its attorneys, submits these reply comments in response to the comments submitted on the Federal Communications Commission’s (“Commission’s”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceedings.² ISO is committed to the Commission’s goal of ensuring that all services billed on local telephone bills are knowingly and fully authorized by the billed customer. The record in this proceeding shows that the voluntary industry anti-cramming measures are adequate to address the true scope of existing authorization challenges to third-party charges.

The record shows that consumers benefit from third-party billing and that the vast majority of third-party billing is legitimate. Further, commenters agree that the Commission’s authority to regulate third-party billing arrangements is limited and that local exchange carriers

¹ ISO provides Internet marketing services and resources to the public, primarily small and medium sized businesses. These services include web design and search engine optimization techniques, such as keyword tagging. ISO verifies each and every order submitted and relies upon LEC billing services as a low-cost way to provide services to small business customers.

² See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)*, CG Docket No. 11-116, Notice of Proposed Rulemaking, FCC 11-106 (rel. July. 12, 2011) (“NPRM”).

(“LECs”) already apply strict application, monitoring and remedial regimes to curb instances of cramming. These measures are effective and much less restrictive on legitimate third-party billing than many of the NPRM’s more problematic proposals. In light of these facts, the appropriate focus should be on improving the voluntary measures that the industry has taken and is taking to reduce instances of cramming.

I. THE LECS HAVE HIGHLIGHTED IMPORTANT CONSUMER BENEFITS TO LEGITIMATE THIRD-PARTY BILLING AND COLLECTION

LECS are in the best position to know and understand the demands of their customers.³ Verizon confirms, for example, that potential customer dissatisfaction is a deterrent to lax third-party billing practices. As Verizon explained, “[s]ince unauthorized charges on customers’ bills could significantly harm customer relationships in a highly competitive environment, Verizon and Verizon Wireless have significant incentives to prevent such charges.”⁴ LECs know that their customers do not want to see unauthorized charges on their bills. They also understand that their customers realize important benefits from including charges for third-party goods and services billed on a single LEC monthly bill.⁵

Specifically, LEC customers enjoy the ability to purchase the low-cost third-party goods and services that result from the efficiencies of this one-stop billing. As an example, Verizon stated that it permits third-party charges to be placed on its bills because “customers prefer to

³ See Comments of Frontier Communications Corporation, CG Docket No. 11-116 et al. at 3 (filed Oct. 24, 2011) (“Frontier Comments”) (LECs have a “unique understanding of their customer base”).

⁴ See Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 et al. at 1 (filed Oct. 24, 2011) (“Verizon Comments”).

⁵ The incentive for LECs to permit third-party billing is not financial, but customer demand. According to one LEC, “[t]hird-party billing is not a significant revenue stream for Frontier. Rather, Frontier offers it to allow consumers the broadest choice possible in purchasing and paying for telecommunications-related products and services.” Frontier Comments at 7.

review and pay a single bill for these services.”⁶ Further, “customers prefer one-stop shopping for these services and it is an easy, efficient way to make certain types of purchases.”⁷

Without third-party billing many third-party service providers likely would be unable to offer their services.⁸ Therefore, if the Commission were to ban third-party billing, or impose such onerous regulations as to increase costs and effectively ban the practice, consumers would lose out on the low-cost goods and services that they can currently purchase with the ease and convenience of a single monthly bill.

II. ALLEGED INSTANCES OF CRAMMING ONLY OCCUR WITH RESPECT TO A FRACTION OF A PERCENT OF THIRD-PARTY CHARGES

The NPRM is premised on the belief that cramming is a significant problem today.⁹ However, the LECs, which are on the front lines of customer billing inquiries, have offered some important perspective on the potential scope of alleged cramming. According to the LECs, the instances of alleged cramming (much less proven cramming) are a small drop in the bucket when compared to total third-party charges that are placed on LEC customer bills.

According to AT&T, “the alleged *widespread prevalence* of cramming is based largely on speculation. For AT&T in particular, the number of customers billed third-party charges is small in comparison to its total customer base.”¹⁰ According to an AT&T analysis, “in September 2011, AT&T issued bills to 23 million wireline customers and only 1.8 million of those bills – roughly eight percent – included third-party charges” and “[i]n September 2011,

⁶ Verizon Comments at 1.

⁷ *Id.* at 2.

⁸ See Comments of Billing Concepts, Inc., CG Docket No. 11-116 et al. at 10 (filed Oct. 24, 2011) (“BSG Comments”).

⁹ See NPRM, ¶ 19.

¹⁰ Comments of AT&T Inc., CG Docket No. 11-116 et al. at 5 (filed Oct. 24, 2011) (“AT&T Comments”).

only a tenth of a percent – approximately 2100 – of AT&T’s wireline customers that were previously billed third-party charges alleged a cram.”¹¹

The vast majority of third-party charges on LEC bills are legitimate. While cramming is an important issue for the industry to address, the scope of the problem is not as broad as the NPRM makes out. The Commission should keep this perspective in mind when considering the necessity for, and scope of, regulatory requirements when weighed against the effective voluntary industry practices discussed below that have been undertaken by the LECs, billing aggregators and service providers to curtail instances of cramming.

III. COMMENTERS AGREE THAT THE COMMISSION’S AUTHORITY TO REGULATE THIRD-PARTY BILLING AND COLLECTION IS LIMITED

In its comments, ISO asserted that the Commission should be mindful that its authority over third-party billing services is limited.¹² Indeed, for the past two decades, the Commission has recognized that it does not have authority pursuant to Title II of the Communications Act to regulate billing and collection services, which are not communications, but rather financial and administrative services.¹³ Further, ISO contended that while the Commission can regulate the format and content of a telephone carriers’ bills under its Title I authority, it may not extend its authority to prohibit LECs from offering billing and collection services.¹⁴

Other commenters, including specifically the LECs, agree that the Commission does not have authority under Title II to regulate third-party billing and collection services. AT&T stated that “Section 201(b) only applies to common carrier ‘practices...for or in connection with

¹¹ *Id.* at 5-6.

¹² *See* Comments of Internet Search Optimization Company, CG Docket No. 11-116 et al. at 3-10 (filed Oct. 24, 2011) (“ISO Comments”).

¹³ *See Billing and Collection Services*, Report and Order, 59 Rad. Reg. 2d 1007 (1986) (“Billing and Collection Services Order”).

¹⁴ *See* ISO Comments at 3.

common carrier services.’ Third-party billing services provided by carriers, however, are not common carrier services.”¹⁵ Verizon concurred that “[i]t has long been established that carrier billing or collection for third parties falls outside Title II of the Communications Act.”¹⁶ Further, the courts have agreed that the Commission’s Title II authority does not extend to regulation of third-party billing and collections.¹⁷ The Commission correctly determined in 1986, and the courts have since agreed, that third-party billing and collection services are not communications services subject to Title II regulation.

Commenters also agree with ISO that the Commission has not met the two-part test from the *Comcast* decision to exercise Title I authority over third-party billing and collection services.¹⁸ ISO contended that even if third-party billing services were within the subject matter of Title I,¹⁹ the proposals to regulate the content of those services are not “reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”²⁰ AT&T

¹⁵ AT&T Comments at 17.

¹⁶ Verizon Comments at n.13.

¹⁷ See Comments of CenturyLink, CG Docket No. 11-116 et al. at n.38 (filed Oct. 24, 2011) (citing *Chladek v. Verizon N.Y. Inc.*, 96 Fed. Appx.19 (2nd Cir. 2004); *Brittan Communications Int’l Corp. v. Southwestern Bell Tel. Co.*, 313 F.3d 899, 905 (5th Cir. 2002); and *Moore v. Verizon*, 2010 U.S. Dist. LEXIS 94544, *28 (N.D. Cal. 2010)).

¹⁸ The two-part test states that the Commission “may exercise ancillary jurisdiction only when two conditions are satisfied: (1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.” *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (citing *Am. Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

¹⁹ See AT&T Comments at 19 (“Title I grants the Commission general jurisdiction over ‘interstate and foreign communications by wire or radio’” and “the Commission has held that carrier-provided third-party billing services are not transmission services, but rather ‘a financial and administrative service.’”) (citing Billing and Collection Services Order, ¶ 32).

²⁰ ISO Comments at 7 (citing NPRM, ¶ 85). In the Billing and Collection Services Order, the Commission recognized that “[t]he exercise of ancillary jurisdiction requires a record finding that such regulation would ‘be directed at protecting or promoting a statutory purpose.’” Billing and Collection Services Order ¶ 37 (citing *Second Computer Inquiry*, 77 FCC 2d 384, 433 (1979), *aff’d on reconsideration*, 84 FCC 2d 50, 92093 (1980), 88

agrees that the “Commission has identified no statutorily-mandated responsibility to regulate third-party billing services under [Title II, III or VI], and thus its exercise of Title I authority here would not be ‘ancillary’ to anything.”²¹ While the Commission can regulate the format and content of a telephone carrier’s bills under its Title I authority, it may not extend its authority to prohibit LECs from offering billing and collection services.

Finally, ISO established in its comments that the Commission may not completely ban third-party billing because such an approach would be an unconstitutional restriction on commercial speech.²² ISO demonstrated that such restrictions on commercial speech must not be more extensive than necessary to advance a substantial government interest asserted.²³ A blanket prohibition is far more extensive than necessary to serve any government interest asserted. In fact, it is the *most extensive* regulatory approach.

Frontier believes that, “the complete elimination of third-party charges is an overbroad response to cramming.”²⁴ AT&T agrees that a ban on third-party billing would be “grossly excessive and wholly unjustified”²⁵ and “[t]here are other viable solutions to prevent cramming that in fact work.”²⁶ These comments confirm that a complete ban on third-party billing would be an unconstitutionally overbroad restriction on commercial speech.

FCC 2d 512 (1981), *aff'd sub nom. CCIA v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom. Louisiana P.S.C. v. United States*, 461 U.S. 938 (1983)).

²¹ AT&T Comments at 20.

²² See ISO Comments at 8-10.

²³ *Id.* at 8 (citing NPRM, ¶ 86 and *Cent. Hudson Gas & Electric Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 566 (1980)).

²⁴ Frontier Comments at 7.

²⁵ AT&T Comments at 2.

²⁶ *Id.* at 8.

IV. INDUSTRY EFFORTS TO REDUCE INSTANCES OF CRAMMING ARE ADEQUATE TO ADDRESS UNAUTHORIZED CHARGES

In 1998, at the urging of the Commission, the telecommunications industry developed new anti-cramming guidelines.²⁷ Pursuant to these voluntary efforts, in order to place a charge on a LEC's bill, ISO will complete its own verification process and must comply with the detailed requirements imposed by the billing aggregator and the LEC. This generally includes pre-screening, review of marketing materials, monitoring and compliance with complaint thresholds. The charge is then generally placed in a separate section of the LEC bill to avoid customer confusion. If a customer complains that he or she did not authorize the charge, then a refund is provided (generally whether or not the customer is correct) and the LEC offers the customer third-party bill blocking.

As an example, Frontier researches vendors, requires submission and approval of vendor marketing materials, requires order validation and verification procedures, and monitors complaints and law enforcement actions against vendors.²⁸ All charges are displayed in a separate section of Frontier's bills²⁹ and every Frontier bill offers third-party bill blocking and includes a statement that customers do not have to pay disputed third-party charges.³⁰ These measures are adequate to address the limited cramming problem when viewed in the appropriate context of the millions of third-party charges that are placed on bills each month.

V. CONCLUSION

Third-party billing and collection offers consumers low-cost services with the ease and convenience of a single bill. Alleged instances of cramming, while an important concern, occur

²⁷ See *FCC and Industry Announce Best Practices Guidelines to Protect Consumers from Cramming*, FCC News Release (rel. July 22, 1998).

²⁸ See Frontier Comments at 8-9.

²⁹ See *id.* at 4.

³⁰ See *id.* at 2.

only in a small fraction of a percent of the millions of third-party charges that are placed on LEC bills each month. Therefore, and in light of the Commission's lack of jurisdiction to regulate third-party billing and collections, the appropriate course of action is to rely upon market forces to discipline telephone company billing for third-party charges. The industry has adopted a voluntary code of billing guidelines that can adequately address instances of cramming.

Respectfully submitted,

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