

**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 OF PERSONAL CONTENT PROTECTION

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Personal Content Protection (“PC Protect”),¹ by and through its attorneys, submits this reply 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

The parties have demonstrated that the vast majority of third-party billing is legitimate and that there are established consumer benefits to continuing such billing practices. Further, commenters agree that the Commission may not prohibit third-party billing due to statutory restrictions on its authority. Finally, local exchange carriers (“LECs”) that provide third-party billing voluntarily 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 onerous proposals. In light of these considerations, the

¹ PC Protect is an online community and personal content tool, designed for the average home PC user to manage personal content and protect them from viruses and other Internet threats. PC Protect offers users a content manager and anti-virus software in order to keep information on their personal computers safe and secure.

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”).

appropriate focus should be on improving where necessary the voluntary measures that the industry has taken and is taking to reduce instances of cramming.

I. ALLEGED INSTANCES OF CRAMMING COMPRISE A TINY PERCENTAGE OF OVERALL THIRD-PARTY BILLING AND COLLECTIONS

The LECs, who are on the front lines of customer billing, dispute the NPRM’s characterization of the prevalence of cramming. In AT&T’s experience “the overwhelming majority of third-party charges on its wireline bills are legitimate.”³ Further, AT&T asserts that “when viewed in context, the reported instances of cramming, which number in the thousands annually, pale in comparison to the number of consumers with third-party billed charges, which number in the tens of millions.”⁴ AT&T has determined that only a tenth of a percent of its customers that were previously billed a third-party charge alleged a cram.⁵ Billing Concepts, Inc., which serves 80% of the billing aggregation market, has determined that it has reduced instances of cramming to one quarter of one percent.⁶ Over 99% of LEC bills are undisputed and properly authorized.

While cramming is an important issue for the industry to address, it is also important to weigh the benefits of third-party billing and collection. Local exchange carriers are in the best position to know and understand the demands of their customers.⁷ Further, LECs have strong incentives to protect their customers against instances of cramming. According to Verizon, “[s]ince unauthorized charges on customers’ bills could significantly harm customer

³ Comments of AT&T Inc., CG Docket No. 11-116 at 7 (filed Oct. 24, 2011) (“AT&T Comments”).

⁴ *Id.* at 2.

⁵ *See id.* at 6.

⁶ See Comments of Billing Concepts, Inc., CG Docket No. 11-116 et al. at 6 (filed Oct. 24, 2011) (“BSG Comments”).

⁷ *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”).

relationships in a highly competitive environment, Verizon and Verizon Wireless have significant incentives to prevent such charges.”⁸ LECs know that their customers do not want to see unauthorized charges on their bills, however, the LECs also understand that their customers realize important benefits from including charges for third-party goods and services on a single LEC monthly bill.⁹

Specifically, the fact that third-party service providers do not have to set up expensive billing and collections departments means that those providers can offer low-cost services to LEC customers. In addition, LEC customers enjoy the ease and convenience of third-party billing, which allows them to pay for many different goods and services on a single bill. As an example, Verizon stated that it permits third-party charges to be placed on its bills because “customers prefer to review and pay a single bill for these services.”¹⁰ Further, “customers prefer one-stop shopping for these services and it is an easy, efficient way to make certain types of purchases.”¹¹

The nation’s largest billing aggregator Billing Concepts, Inc., doing business as BSG Clearing Solutions (“BSG”), confirmed that without the ability to place charges on LECs bills, many of its third-party service providers would not be able to provide low-cost services to customers and would go out of business. BSG stated that,

the costs of maintaining independent billing and collection infrastructure would be prohibitive for many of BSG’s service providers. Additionally, consumers would lose the benefit of a single bill, forcing them to choose between a vendor’s

⁸ See Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 et al. at 1 (filed Oct. 24, 2011) (“Verizon Comments”).

⁹ 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.

¹⁰ Verizon Comments at 1.

¹¹ *Id.* at 2.

lower prices and the convenience of a single monthly payment. Without the ability to place charges on consumers' telephone bills, many of BSG's service providers would simply cease to exist and their markets would become less competitive.¹²

In sum, the need for any additional regulation is undercut by the record in this proceeding. Many of the NPRM's proposals would far exceed even a "throw out the baby with the bathwater" overreaction. Rather, they propose remedies that are far more drastic than the circumstances warrant. The actual experiences of those providing third-party billing demonstrate that cramming is being effectively prevented today.

II. COMMENTERS AGREE THAT THE COMMISSION DOES NOT HAVE STATUTORY AUTHORITY TO REGULATE THIRD-PARTY BILLING AND COLLECTION

In its comments, PC Protect asserted that the Commission's authority over third-party billing services is limited.¹³ 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.¹⁴ Further, commenters agree that the Commission may not extend its Title I authority to prohibit LECs from offering billing and collection services.

The LECs agree that the Commission does not have authority under Title II to regulate third-party billing and collection services.¹⁵ Further, the courts have confirmed that the Commission's Title II authority does not extend to regulation of third-party billing and

¹² BSG Comments at 10.

¹³ See Comments of Personal Content Protection, CG Docket No. 11-116 et al at 5-9 (filed Oct. 24, 2011) ("PC Protect Comments").

¹⁴ See *Billing and Collection Services*, Report and Order, 59 Rad. Reg. 2d 1007 (1986) ("Billing and Collection Services Order").

¹⁵ See e.g., AT&T Comments at 17 ("Section 201(b) only applies to common carrier 'practices...for or in connection with *common carrier services*.' Third-party billing services provided by carriers, however, are not common carrier services.") (emphasis added); and Verizon Comments at n.13 ("It has long been established that carrier billing or collection for third parties falls outside Title II of the Communications Act").

collections. For example, in a case involving a claim, pursuant to Section 201, that Verizon's third-party billing and collection system lacked sufficient protections against cramming, the court dismissed the complaint, because "these laws do not apply to third-party billing services."¹⁶ The plaintiffs had developed an alternate (and ultimately unsuccessful) theory because they did not dispute that "billing and collection services provided by LECs are not subject to regulation under Title II of the Act."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 PC Protect 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 PC Protect contended that even if third-party billing services were within the subject matter of Title I, the proposals to regulate the content of those services are not "reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."¹⁹ Verizon's analysis also found that "any claim of ancillary authority under Title I by the Commission would fail, in part, because there is no substantive statutory provision

¹⁶ *Moore v. Verizon*, 2010 U.S. Dist. LEXIS 94544, *9 (N.D. Cal. 2010).

¹⁷ *Id.* at *28.

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 PC Protect Comments at 8 (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 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)).

in Title II to which the proposed action would be ancillary.”²⁰ 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.

III. THE EXISTING VOLUNTARY INDUSTRY GUIDELINES WORK TO REDUCE INSTANCES OF CRAMMING

In 1998, at the urging of the Commission, the telecommunications industry developed new anti-cramming guidelines.²¹ Pursuant to these voluntary efforts, in order to place a charge on a LEC’s bill, PC Protect completes 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, and monitoring and compliance with complaint thresholds. The charge is then generally placed in a separate section of the LEC bill to avoid customer confusion.²² If a customer complains that he or she did not authorize the charge, then a refund is provided and the LEC offers the customer third-party bill blocking.

As an example, Verizon screens third-party service providers through an application process, requires that marketing materials be submitted to Verizon for approval, monitors the number of cramming complaints received by providers and imposes threshold caps for such complaints.²³ Providers that exceed the applicable thresholds must submit a remedial “Action Plan” and can be terminated.²⁴ If a customer alleges that a charge was unauthorized, Verizon removes the charge from the bill and offers that customer third-party bill blocking.²⁵ These

²⁰ Verizon Comments at n.13.

²¹ *See FCC and Industry Announce Best Practices Guidelines to Protect Consumers from Cramming*, FCC News Release (rel. July 22, 1998).

²² This also is required by the *Truth-in-Billing* rules. *See* 47 C.F.R. § 64.2401(a)(2).

²³ *See* Verizon Comments at 4.

²⁴ *See id.*

²⁵ *See id.* at 4-5.

measures are adequate to address the limited cramming instances when viewed in the appropriate context of the millions of third-party charges that are placed on bills each month.

Put simply, based on the limited scope of instances of unauthorized charges compared to overall third-party billing, the demonstrated benefits of third-party billing for consumers and the Commission's limited authority to regulate in this area, the Commission should focus on working with the industry to improve the voluntary code of billing guidelines, which can adequately address instances of cramming.

Respectfully submitted,

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