BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Empowering Customers 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	)	CG Docket No. 98-170
	)	

To: The Secretary

REPLY COMMENTS

1 800 COLLECT, INC. ("1 800 COLLECT"), by its attorneys, hereby submits these Reply Comments in response to the Report and Order and Further Notice of Proposed Rulemaking issued by the Commission in the above-referenced proceeding.[1] While 1 800 COLLECT supports Commission action against cramming of non-telecommunications services, the opt-in measure proposed in the FNPRM is grossly disproportionate to any problem that has

---

[1] *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42 (rel. Apr. 27, 2012), 77 Fed. Reg. 30915 (May 24, 2012) ("R&O" or "FNPRM"). The Commission extended the Reply Comment deadline to July 20, 2012. *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Order, DA 12-1039 (rel. June 29, 2012). 1 800 COLLECT filed Comments in response to the FNPRM on June 25, 2012. *See Comments of 1 800 COLLECT, Inc.*, Docket No. CG 11-116 (June 25, 2012).

1 800 COLLECT also filed initial Comments in this proceeding on October 24, 2011, in response to the Commission's initial NPRM. *See Comments of 1 800 COLLECT, INC.*, Docket No. CG 11-116 (Oct. 24, 2011); *See also Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011) ("NPRM" or "Cramming NPRM"); 76 Fed. Reg. 52625 (Aug. 23, 2011). 1 800 COLLECT filed Reply Comments on November 21, 2011. *See Reply Comments of 1 800 COLLECT, Inc.*, Docket No. CG 11-116 (Nov. 21, 2011).

been evidenced on the record in this proceeding and does not deserve to be adopted. The parties supporting opt-in measures, including consumer groups, state Public Utilities Commissions ("PUCs") and other advocates of such a result, have not demonstrated any reasonable connection between legitimate telecommunications services and third-party billing abuses that would justify sweeping anti-cramming measures that treat all third-party billing arrangements as equally suspect and warranting unnecessary and inappropriate controls. Indeed, as the record in this proceeding shows, a number of consumer advocates recognize the need to exempt legitimate telecommunications services from any opt-in requirement or a prohibition on third-party billing arrangements. Once again, based on the record of this proceeding, 1 800 COLLECT submits that the Commission's anti-cramming regulations must be narrowly tailored to deter cramming abuses associated with non-telecommunications, or "enhanced" services, without harming legitimate telecommunications businesses that rely on third-party billing to make available necessary, widely-used telecommunications services for consumers. In support thereof, 1 800 COLLECT states as follows.

The Commission, state PUCs and both telecommunications providers and consumer advocate groups rightfully condemn cramming abuses, and cite statistics demonstrating an unacceptable number of cramming-related customer complaints.[2] However, the existence of cramming problems requiring Commission action generally derive from non-telecommunications services and do not evidence a cramming epidemic warranting the most drastic measures

---

[2] *See, e.g., Comments of Michigan Public Service Commission*, Docket No. CG 11-116 (June 25, 2012) at 2; *Comments of Center For Media Justice, Consumer Action, Consumer Federation of America, Consumers Union, National Consumer Law Center, on behalf of its low-income clients, and National Consumer League*, Docket No. 11-116 (June 25, 2012) ("Center for Media Justice et al. Comments") at 8-11.

available to the Commission, measures that could upend the longstanding business models of traditional telecommunications services providing long accepted and significantly used telecommunications services. In response to the NPRM, the Commission properly undertook the former.[3] Nothing in the FNPRM nor any of the Comments filed by consumer advocacy groups and state PUCs supports the latter. 1 800 COLLECT submits that, as applied to traditional telecommunications services, the opt-in requirement proposed in the FNPRM is such a drastic measure, which is grossly out of proportion to the problem it is meant to address.

Neither the FNPRM nor comments filed in response thereto present evidence justifying application of an opt-in requirement to legitimate telecommunications services, such as the collect calling that 1 800 COLLECT provides. Anecdotes about the misuse of traditional telecommunications services as a pretext for fraudulent billing do not provide a reasonable basis for materially burdening accepted, established segments of the telecommunications industry. As noted by the billing aggregator, BSG, in its Comments, BSG facilitated nearly 13 million collect call transactions on over 2.3 million consumer phone bills.[4] In the FNPRM, 1 800 COLLECT found one reference to a fraudulent billing scheme involving collect calls.[5] The miniscule ratio of cramming abuses to successful services provided, within the context of traditional

---

[3] In the R&O, the Commission adopted important measures giving consumers the tools to identify and combat crammers placing fraudulent charges on consumer phone bills and discouraging bad actors from abusing the third-party billing process. These measures include the requirement that telecommunications carriers notify consumers of the option to block third-party charges if a carrier offers such an option, and the requirement that third-party charges appear on consumer bills in a separate and distinct section from charges assessed by the carrier. *See* FNPRM at ¶¶ 52, 67. 1 800 COLLECT supported these measures in its initial Comments and Reply Comments in this proceeding, and it continues to believe that, given a chance, these measures can significantly reduce the overall problem of cramming.

[4] *See Comments of Billing Concepts, Inc.*, Docket No. CG 11-116 (June 25, 2012) at 3.

[5] *See* FNPRM at ¶ 24 (citing *FTC v. Nationwide Connections, Inc.*, FTC Case No. 06-80180).

telecommunications services, as established in this proceeding, suggests that an opt-in scheme as applied to traditional telecommunications services is a remedy that is seeking out a nonexistent problem.

As previously pointed out by 1 800 COLLECT, a formal opt-in requirement is at odds with the nature of collect calling and the manner in which consumers utilize collect calling services. On the one hand, as recognized by the Commission and others, the situational, "on demand" nature of collect calling does not lend itself to a one-time, fixed decision to opt in or out of collect calling altogether.[6] Forcing customers to make a single advance decision with respect to collect calls upends the value and utility of the collect calling service model and runs directly counter to consumers' historical calling practices and needs. And on the other hand, a casual "opt-in" component is already integrated into the process, i.e., customers must opt-in to the service and billing features of collect calling on a one-off basis each time they place or accept a collect call. An opt-in feature imposed atop this explicit consumer choice is, therefore, unnecessary and counterproductive.[7] In fact, an opt-in requirement in the collect calling context will only constitute a solution searching for a problem.

The Commission's proposed embrace of a drastic opt-in requirement makes even less sense given that the practical measures adopted by the Commission in the R&O have not yet been given an opportunity to work. The Commission's recently-adopted regulations,[8] together with voluntary industry changes,[9] should effectively address the cramming problem as it

---

6 *See* NPRM at ¶ 139 (citing Billing Concepts Comments at 2-3).

7 *See also* BSG Comments at i.

8 *See supra* n. 3.

9 In March, Verizon announced that it would cease providing wireline billing services to third parties that offer "miscellaneous or enhanced services," and AT&T and CenturyLink shortly followed suit. *See Comments of Verizon and Verizon Wireless*, Docket No. CG 11-116

presently exists without resorting to an opt-in scheme that could upend the existing business models of legitimate telecommunications services. As numerous commenters have indicated, given the competitive marketplace in which consumers have many different telecommunications services to choose from, voice providers must make every effort to protect their customers from unauthorized charges and address cramming abuses, or risk losing their customers to those voice providers who do.[10]

In any event, if the Commission moves forward with an opt-in requirement, 1 800 COLLECT reiterates its position that legitimate telecommunications services, such as collect calling, as opposed to "enhanced" or "miscellaneous" non-telecommunications services, must be exempted from such an opt-in scheme.[11] Many consumer advocacy groups and state PUCs recognize and agree with this common sense position.[12] Traditional telecommunications services are not the source of cramming problems, and such services should not be unfairly burdened by regulations meant to address the abuses committed by others who have no relationship to telecommunications, other than a billing one..

In sum, 1 800 COLLECT believes an opt-in approach is unnecessary and that such an aggressive measure would impose costs on telecommunications businesses and consumers far outweighing any consumer protection benefits. In an effort to target abusive cramming practices, the Commission must not adopt an opt-in scheme that casts too wide a net and

---

(June 25, 2012).

[10] *See, e.g., Comments of Independent Telephone & Telecommunications Alliance*, Docket No. CG 11-116 (June 25, 2012) ("ITTA Comments") at 2.

[11] *See also* ITTA Comments at 6.

[12] *See* Center for Media Justice et al. Comments at 17 (agreeing that any prohibition on third-party billing "should not apply to services that are related to the underlying telephone service, such as dial-1 and dial-around long distance calling services, collect calling, directory assistance, operator-assisted telephone calls and inmate calling services").

undermines legitimate telecommunications services at the expense of market competition and consumer choice. 1 800 COLLECT submits that the record in this proceeding in no way comes close to demonstrating any substantial harm to consumers commensurate with such drastic measures in the context of traditional telecommunications services. The Commission should give the controls adopted in the R&O a reasonable opportunity to work and develop a more in-depth record of harm to consumers, from cramming associated with telecommunications services, before concluding that more drastic measures are necessary to reduce the incidence of cramming that is, at best, minimal. However, if the Commission adopts the opt-in proposal, 1 800 COLLECT urges the Commission to steer clear of potential overreach by adopting a clear exemption for collect calls and other legitimate telecommunications services. Such an exemption is widely supported by industry stakeholders, anti-cramming advocates and state and federal regulators alike. It would allow the Commission to pursue more aggressive anti-cramming measures without harming legitimate telecommunications services and the many consumers who, owing to their financial situation or other reasons, rely upon them.

WHEREFORE, 1 800 COLLECT, INC. respectfully requests that the Commission reject the proposal to adopt an opt-in requirement for third-party billing, or, in the alternative, should the Commission adopt its opt-in proposal, that the Commission exempt legitimate telecommunications services such as collect calling from the opt-in requirement.

Respectfully submitted,

1 800 COLLECT, INC.

By:_____

Barry A. Friedman
Thompson Hine LLP
Suite 800
1920 N Street, N.W.
Washington, D.C. 20036
(202) 331-8800

Dated: July 20, 2012