

**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

**REPLY COMMENTS OF THE COALITION FOR A
COMPETITIVE TELECOMMUNICATIONS MARKET**

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The Coalition for a Competitive Telecommunications Market ("CCTM"),¹ by its undersigned attorneys, respectfully submits the following reply comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") *Further Notice of Proposed Rulemaking* ("FNPRM") released on April 27, 2012 in the above-captioned proceeding.² The CCTM submitted initial comments in response to the *FNPRM* on June 25, 2012 ("*CCTM Comments*"). The CCTM also previously submitted comments and reply comments in response to the FCC's July 12, 2011 *Notice of Proposed Rulemaking* ("*NPRM*").³

¹ The CCTM is comprised of various providers of presubscribed 1+ telecommunications services, including the following: Affordable Long Distance LLC; Legent Communications Corporation; Long Distance Access Inc.; Long Distance Consolidated Billing Company; Preferred Long Distance, 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*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11-116, CG Docket No. 09-158, CC Docket No. 98-170 (FCC 12-42) (rel. April 27, 2012).

³ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges* ("Cramming"); *Consumer Information and Disclosure*; *Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011). The CCTM submitted initial comments (filed in CG Docket No. 11-116) in response to the *NPRM* on October 24, 2011 ("*CCTM Initial Comments*") and reply

I. INTRODUCTION AND SUMMARY OF CCTM REPLY COMMENTS

As indicated in the *CCTM Comments*, the CCTM is generally opposed to an opt-in approach with respect to third-party billing of telecommunications services, and specifically opposed to such an approach for competitive, presubscribed 1+ telecommunications services (“1+ Services”). The majority of commenters echoes a similar sentiment and demonstrates that an opt-in approach to third-party billing would: (1) be unworkable; (2) create significant burdens and anticompetitive concerns for the telecommunications industry; and (3) ultimately harm consumers. Evidence in the record further demonstrates that any potential opt-in requirement should specifically exempt 1+ Services (as well as other telecommunications services) because such services are already subject to existing opt-in mechanisms, and an exemption is necessary to protect the competitive 1+ Service market from anticompetitive abuses. Other commenters continue to advocate for an outright ban of third-party billing,⁴ suggest that an opt-in approach should apply to telecommunications services,⁵ advance third-party billing opt-in requirements which would be unworkable,⁶ propose alternative solutions which are overly burdensome and unnecessary,⁷ or suggest that states should be allowed to implement more stringent requirements. The Commission should disregard such proposals, which are not in the public interest.

comments (filed in CG Docket No. 11-116) on December 5, 2011 (“*CCTM Reply Comments*”). Both of these submissions are hereby incorporated by reference.

⁴ See, e.g. Comments of Virginia State Corporation (“Virginia”) at 1; Comments of Center for Media Justice, et al. (“Center for Media Justice”) at 15. The Commission has already found that an outright ban on third-party billing is unjustified. *FNPRM* at para. 90 (“...we disagree that third-party billing offers no, or so few, consumer benefits that it is appropriate to ban it altogether.”).

⁵ See, e.g., Comments of Michigan Public Service Commission (“Michigan”) at 4.

⁶ See, e.g., Michigan at 3 and 5; Virginia at 2-3.

⁷ See, e.g., Comments of Massachusetts Department of Telecommunications and Cable (“Massachusetts”) at 9-10.

II. THE COMMISSION SHOULD NOT ADOPT AN ADDITIONAL OPT-IN REQUIREMENT WITH RESPECT TO THIRD-PARTY BILLING OF TELECOMMUNICATIONS SERVICES

The record clearly establishes that the Commission should not adopt an additional opt-in mechanism for third-party billing of 1+ Services or other telecommunications services. Such a requirement is unnecessary, especially with respect to 1+ Services, and the most effective solution—enforcement activity—does not require adoption of burdensome regulatory requirements which would undermine competition and ultimately harm consumers.

A. The Record Conclusively Demonstrates that an Additional Opt-In Mechanism is Unwarranted, Especially with Respect to 1+ Services and Other Telecommunications Services

Comments in the record further validate the CCTM's position that an additional opt-in mechanism for third-party billing of telecommunications services is unwarranted, especially with respect to competitive 1+ Services. Indeed, the Commission has already concluded, in the *FNPRM*, that the record demonstrates that non-carrier third-party charges are the primary cause of the cramming problem.⁸ The “root cause” of the problem has been adequately addressed by the Commission through additional safeguards recently adopted in the Report and Order portion of the *FNPRM*, as well as by the industry through essentially eliminating third-party billing for non-telecommunications services.⁹ While third-party billing continues for telecommunications services, additional burdensome restrictions, especially an additional opt-in mechanism,¹⁰ are simply unnecessary (and unsupported by the record) at this time.

⁸ *FNPRM* at para. 41.

⁹ See *FNPRM* at para. 44; Comments of AT&T, Inc. (“AT&T”) at 2; Comments of Verizon and Verizon Wireless (“Verizon”) at 1; Comments of CenturyLink (“CenturyLink”) at 2.

¹⁰ Although the Commission has not specifically sought comment on it, any additional requirement to implement mandated blocking of third-party billed charges is also unwarranted for the same reasons discussed herein.

An additional opt-in requirement amounts to nothing more than a serious waste of resources to: (1) regulate an industry that has essentially been rendered extinct (*i.e.*, third-party billing of non-telecommunications services); and (2) over-regulate the telecommunications service industry where such restrictions are unnecessary.¹¹ This is especially the case for 1+ Services, which are *presubscribed* services already subject to significant regulatory requirements that protect consumers against both slamming and cramming.¹² Furthermore, consumers must already manifest specific and ascertainable intent to be third-party billed for 1+ Service and other telecommunications services,¹³ rendering an additional opt-in mechanism completely redundant.¹⁴ In fact, consumers expect—and often demand—that charges for telecommunications services will appear on a single telephone bill.¹⁵ Given the evidence in the record, additional opt-in requirements for third-party billing of telecommunications services would be not only unnecessary, but also in direct contradiction to consumer expectations. Accordingly, the Commission must not adopt any additional opt-in mechanism for third-party billing at this time.¹⁶

¹¹ Evidence in the record clearly demonstrates that telecommunications services do not raise the same cramming issues as non-telecommunications services and are not typically the subject of cramming complaints. *See, e.g.*, Verizon at 15.

¹² *See, e.g.*, CCTM Comments at 3-7. The current requirements essentially serve as a means for consumers to consent both to a change of presubscribed 1+ Service providers and to the third-party billing of charges associated with authorized 1+ Services. *See* 47 C.F.R § 64.1100 *et seq.*

¹³ *See, e.g.*, Verizon at 16; Comments of Billing Concepts, Inc. (“Billing Concepts”) at 5; Comments of Timothy Miranda, Esq. at 2.

¹⁴ Accordingly, the assertion by some commenters that an additional opt-in mechanism is needed for telecommunications services is unfounded. *See* Michigan at 4.

¹⁵ *See* Verizon at 16; CCTM Comments at n. 12.

¹⁶ If the Commission should decide to adopt an opt-in mechanism, despite the fact that third-party billing of non-telecommunications services is essentially now non-existent, it must also specifically exempt telecommunications services and, especially, 1+ Services. *See, e.g.*, Comments of Citadel Contact Systems, Inc. (“Citadel”) at 5-6; FNPRM Comments.

The record further demonstrates that effective regulatory mechanisms already exist to deter cramming by telecommunications service providers, including Commission imposed penalties and other enforcement actions.¹⁷ As NASUCA appropriately concludes, recognizing that the problem to be addressed is in fact *cramming itself*, and not necessarily third-party billing, is an important reality in determining the proper course of action.¹⁸ In that regard, an additional regulatory opt-in mechanism for third-party billing would be misdirected because it would unduly punish the innocent without truly targeting the guilty. On the other hand, insufficient enforcement activity renders any law, no matter how restrictive, ineffective in preventing unlawful activity. The act of cramming is already across-the-board unlawful; additional opt-in restrictions for third-party billing would not make cramming any more unlawful. It simply impedes responsible and beneficial service providers and creates additional requirements, which must then be policed and enforced *in addition* to the existing prohibition against cramming. Again, NASUCA aptly states that “[e]nforcement activity produces desired results” and demonstrates that this approach has indeed been effective even in spite of the alleged prevalence of cramming.¹⁹ Therefore, the proper and most effective solution to combat cramming—enforcement activity—does not require that the Commission implement an additional, burdensome opt-in regulatory edict.

¹⁷ See, e.g., Citadel at 4-5.

¹⁸ Comments of National Association of State Utility Consumer Advocates (“NASUCA”) at 4.

¹⁹ NASUCA at 21 (Praising the results “[i]n Iowa, where an enforcement effort has been in place for a decade, the number of cramming complaints has slowed to a trickle.”).

B. Significant Evidence is Presented in the Record to Establish that an Opt-In Approach Would Undermine Competition and Ultimately Harm Consumers

An additional opt-in mechanism with respect to 1+ Services and other telecommunications services would not be prudent, and would “undermine pro-competitive policies which lie at the heart of Commission regulation.”²⁰ If the Commission should implement an additional opt-in requirement, despite the absence of support in the record,²¹ it must also specifically exempt 1+ Services, among other measures, to protect against anticompetitive abuse.²² Other commenters have documented the same anticompetitive concerns.²³ Significantly, Citadel also recognizes:

In all of this, one point cannot be emphasized too strongly: the Commission should not, as suggested by some state attorneys general, permit the verification of a consumer’s opt-in decision to be managed by the LECs. LECs are in direct competition with the companies providing competitive telecommunications services, and allowing LECs to be gatekeepers would be akin to the proverbial situation of allowing the wolf to guard the sheep. The LECs would be in a position to use the opt-in requirement as a vehicle to convert or win back consumers – a situation that would further undermine the Commission’s pro-competitive policies in the long distance market.²⁴

In this regard, the CCTM agrees with CenturyLink that there is likely no opt-in model which “can constitute a reasonable and balanced approach to third-party billing,”²⁵ especially where the LECs are tasked with the responsibility of ascertaining a consumer’s opt-in consent.²⁶

²⁰ Citadel at 2.

²¹ Citadel at 2.

²² See *CCTM Comments* at 7-16.

²³ See Citadel; Comments of Consumer Telcom, Inc. (“Consumer Telcom”).

²⁴ Citadel at 6-7 (footnote 16 omitted). See also Consumer Telcom at 4 (asserting that control over opt-in would afford a LEC “the advantage of marketing its long-distance services to the consumer with the knowledge of the customer’s existing long-distance provider’s services, under the guise of obtaining approval for billing of non-carrier third-party charges.”); *CCTM Comments* at 7-14.

²⁵ CenturyLink at 7.

On the other hand, CenturyLink also alleges that consumers may become frustrated with LECs for not being able to exactly customize the types of services subject to opt-in approval.²⁷ For example, a consumer may seek to refuse third-party billing of all services (including 1+ Services), failing to understand that third-party billing of presubscribed 1+ Services is not subject to an opt-in requirement (assuming the Commission adopts the CCTM's recommendations to exempt 1+ Services from any potential opt-in requirement). The CCTM agrees that this could be a point of confusion, which is the very reason that consumers must also be provided with accurate information and disclosures with respect to any exemption of 1+ Services from an opt-in approach.²⁸ Absent specific confirmation that accurate disclosures must be provided to consumers, LECs would be in a position to provide anticompetitive information (*e.g.*, informing consumers that only LEC 1+ Services may be utilized, or misinforming consumers that opting-in to third-party billing of competitive 1+ Services would serve as opt-in for all other service types) to the detriment of competitive 1+ Service providers.

Additionally, as several commenters have noted, an opt-in mechanism with respect to third-party billing adds numerous layers of unnecessary and unrecoverable costs.²⁹ Possible costs could include, among other things:

specific additional expenses related to the training of in-house customer service personnel and the processing of customer information, the hiring of third-party verification service companies to contact embedded customer bases, and/or the preparation, mailing and processing of customers' letters of authorization likely would need to be incurred by service providers. Additionally, the need to educate existing customers could be

²⁶ Notably, CenturyLink acknowledges that the only likely, reasonable opt-in model would be one where opt-in consent is obtained by a presubscribed 1+ Service provider at the time the provider is selling its services to the consumer—the very type of affirmative customer approval that is already being obtained by 1+ Service providers today. *See CenturyLink* at n. 11.

²⁷ *See CenturyLink* at 9.

²⁸ *See FNPRM Comments* at 14-15.

²⁹ *See CenturyLink* at 10.

extensive and additional customer service representatives might need to be hired and/or trained regarding how to instruct subscribers on the opt-in process.³⁰

Unfortunately, the most likely victims of these increased costs will be the consumers and providers of competitive telecommunications services.³¹

In sum, an additional opt-in mechanism creates an anticompetitive environment where: (1) the potential for anticompetitive abuse is exacerbated;³² (2) consumers would abandon competitive 1+ Services because of an overly confusing or frustrating process;³³ (3) significant opt-in implementation costs would be passed on to 1+ Service providers resulting in necessary rate increases;³⁴ and (4) competitive 1+ Service providers would be effectively unable to bill for services (or other legitimate charges associated with such services)³⁵ even though a consumer has already manifested intent to change presubscribed service providers in accordance with applicable requirements.³⁶ Ultimately, an additional opt-in mechanism would harm consumers

³⁰ ITTA at 5. *See also*, Citadel at 3-4; CenturyLink at 9-10 (noting the burden of adequately communicating details of an opt-in mechanism to consumers would be high and costly).

³¹ *See* AT&T at 3-4 (noting that opt-in would be inconvenient and burdensome for consumers, increase costs and burdens for small telecommunications service providers, and “substantially raise their costs of doing business and threaten their very viability.”).

³² *CCTM Comments* at 10-12.

³³ *See* Consumer Telcom at 2; Billing Concepts at 9-10; *CCTM Comments* at 5.

³⁴ *See* AT&T at 3-4. Citadel at 4; *CCTM Comments* at 6.

³⁵ *See CCTM Comments* at 13-14 (explaining how LECs have unfairly blocked certain recurring charges, such as universal service fund fees, associated with 1+ Services). The CCTM commends Verizon for affirmatively acknowledging that it “will allow third-party billing for certain charges associated with such calls, such as charges for calling plans, Universal Service, and PIC changes as well as administrative cost recovery fees.” Verizon at 16. However, the CCTM hopes that this commitment will be effectively implemented in practice, and urges other LECs to provide similar assurances. Notwithstanding the foregoing, the Commission should explicitly prohibit LECs from blocking any legitimate charges associated with competitive 1+ Services. *See CCTM Comments* at 14.

³⁶ *See* Consumer Telcom at 2 and 5; *CCTM Comments* at 13-14.

by reducing consumer choice in competitive 1+ Service providers,³⁷ effectively leaving consumers with only the 1+ Service options provided by the LECs.³⁸ For these reasons, an additional opt-in mechanism for third-party billing must not be extended to 1+ Services.

III. THE CCTM OPPOSES PROPOSED SOLUTIONS WHICH ARE UNDULY COMPLICATED, BURDENSOME AND NOT IN THE PUBLIC INTEREST

The Commission should not adopt any other proposed regulatory solutions which are unduly complicated, burdensome and not in the public interest. Some commenters have proposed alternative solutions which do not necessarily address the problem of cramming, and would create even further undesired effects. The Commission should disregard such proposals, and should expressly confirm that states are barred from adopting any anti-cramming regulations which would effectively serve as a barrier to entry for competitive telecommunications services.

A. Competitive 1+ Service Providers Should be Allowed to Rely Upon Carrier Change Authorizations and Service Utilization Records to Refute Disputes Regarding Third-Party Billed Charges

Virginia and Michigan advocate for an additional opt-in mechanism for third-party billing which would also apply to telecommunications services.³⁹ As explained above, such an opt-in mechanism is unwarranted (especially for 1+ Services),⁴⁰ and would ultimately harm consumers by negatively impacting competition in various ways.⁴¹ Virginia and Michigan also advance proposals which would further the impropriety and anticompetitive nature of third-party

³⁷ See Billing Concepts at 4 (“If third-party telecommunications services were subject to a uniform opt-in requirement, competition would diminish and prices would rise. Consumers would ultimately be harmed.”)

³⁸ CCTM Comments at 7.

³⁹ See Virginia at 2-3; Michigan at 3.

⁴⁰ See *supra* at 3.

⁴¹ See *supra* at 6.

billing of telecommunications services. Specifically, Virginia proposes that a LEC which provides third-party billing services should be subject to a penalty if third-party charges are not immediately removed once a customer claims the charges are unauthorized.⁴² Michigan advances a similar proposal to immediately, upon customer complaint, remove and recourse disputed charges “without further question to the consumer,” and leaves the third-party vendor with the only option of whether to then “choose to bill the customer directly.”⁴³ These proposals which allow for unilateral determination that a billing complaint is always presumed legitimate and in favor of the consumer greatly concern the CCTM,⁴⁴ especially since legitimate third-party 1+ Service providers are provided with no opportunity to show that disputed services and charges were indeed authorized by the consumer. This result directly contradicts established Commission requirements and processes for changes to presubscribed 1+ Services (and disputes thereof), and is manifestly inequitable to 1+ Service providers.⁴⁵ Competitive 1+ Service providers should be able to rely on recorded independent third-party verifications (or letters of authorization) which comply Commission rules, along with the fact that 1+ Services have indeed been utilized, to contradict a customer’s claim (or a unilateral determination made by LECs) that charges were unauthorized. Accordingly, the Commission should disregard such proposals and also confirm that LEC refusal to third-party bill for 1+ Services where such “proof” is readily apparent is anticompetitive and potentially in contravention of Commission policies.

⁴² Virginia at 2-3.

⁴³ Michigan at 5.

⁴⁴ Of similar concern is Verizon’s statement that it “seeks to quickly resolve individual customer complaints regarding third-party message telephone services. For example, Verizon will attempt to resolve the issue on the customer’s first call to Verizon.” Verizon at 14.

⁴⁵ See *CCTM Comments* at 11-13.

B. A Do-Not-Cram Registry is Unworkable and Unduly Burdensome

The CCTM opposes Massachusetts' proposal of a "do-not-cram" program modeled after the National Do Not Call Registry.⁴⁶ Massachusetts suggests that "[c]onsumers could indicate their preference to prohibit unauthorized third-party charges from appearing on their bill by registering their phone number(s)."⁴⁷ Further, "third-party billing entities" would have the burden of paying for and complying with the list.⁴⁸ There are numerous issues with this proposal. First and foremost, Rube Goldberg-fashioned regulatory solutions (*i.e.*, overly-complex solutions that strive to accomplish a simple function in indirect, convoluted ways) are unnecessary when simply enforcing the existing laws against wrongdoers has proven to be effective in combatting cramming.⁴⁹ A "do-not-cram" list would be expensive to maintain, potentially confusing to consumers,⁵⁰ and create opportunities to falsify registrations in order to disadvantage businesses utilizing third-party billing.⁵¹ Furthermore, such a proposal would only invite states to then create additional do-not-cram lists,⁵² adding to the complexity and expense

⁴⁶ See Massachusetts at 9-10. For the same reasons discussed with respect to opt-in, the CCTM also opposes Massachusetts' suggestion that the Commission alternatively implement a mandatory blocking option for third-party billed charges. Massachusetts at 4.

⁴⁷ Massachusetts at 10.

⁴⁸ Massachusetts at 10.

⁴⁹ See NASUCA at 21; *supra* at n. 19. The National Do Not Call program is governed by numerous pages of complicated regulations and requires two federal agencies to administer. See, *e.g.*, 47 C.F.R § 64.1200. A do-not-cram registry modeled on the Do Not Call program is likely to be even more complicated.

⁵⁰ See, *e.g.*, Massachusetts at 8-9 (alleging consumers would be confused by opt-in disclosures and would not be able to make an informed decision).

⁵¹ All that is needed to register on the National Do Not Call Registry is a phone number and email address. See <https://www.donotcall.gov/register/registerinstructions.aspx> (last accessed July 16, 2012).

⁵² Notably, Massachusetts has its own state-level do-not-call registry. In the CCTM's experience, this additional requirement discourages competitive 1+ Service providers from offering services in Massachusetts due to increased costs and compliance burdens. In effect, the

of a third-party billing process and providing little or no protection to consumers against intentional crammers.⁵³ Accordingly, the Commission should disregard the do-not-cram proposal, as well as any other proposals advancing similarly over-complicated, unproven solutions.

C. States Should be Barred From Implementing More Stringent Anti-Cramming Requirements Which Would Effectively Serve as a Barrier to Entry for Competitive Telecommunications Services

The CCTM is opposed to NARUC's request that the states be permitted to implement more stringent rules with respect to cramming and third-party billing of telecommunications services.⁵⁴ Inconsistent federal and state regulations are not in the interest of the consumer, and impede the availability of small businesses to provide cost-effective, competitive telecommunications services.⁵⁵ Furthermore, the record contains substantial evidence that states have varying degrees of regulatory authority with respect to cramming and the various types of telecommunications and telecommunications services.⁵⁶ Without a uniform, federal standard, consumers would inevitably face a patchwork quilt of state-by-state regulations which add to the

state's choice to "protect" consumers has also disadvantaged them by reducing consumer choice. If all states imprudently elected to implement their own do-not-call or do-not-cram registries, companies would necessarily need to comply with the varying requirements of at least 51 different programs to do business. More likely, companies would simply pursue other less burdensome endeavors.

⁵³ As in the case of the National Do Not Call Registry, the program would only be effective with respect to companies which are willing to comply with the law in the first place. Furthermore, affirmative registration steps by the consumer are still required in order to receive any protection, and government enforcement activity would still be needed to ensure compliance.

⁵⁴ See NARUC at 8-10.

⁵⁵ See *CCTM Reply Comments* at 12 ("inconsistent state regulation makes nationwide compliance more expensive for carriers, increases costs to consumers, and inevitably creates even greater consumer confusion as to what types of protections against cramming are provided.").

⁵⁶ See *CCTM Reply Comments* at 12-13.

confusion regarding the type of cramming protections available.⁵⁷ Accordingly, the CCTM respectfully reiterates its request that the Commission expressly confirm that Section 253(a) of the Communications Act of 1934, as amended (the “Act”),⁵⁸ would prohibit states from enacting more stringent anti-cramming regulations which would effectively serve as a barrier to entry for competitive telecommunications services.⁵⁹

⁵⁷ *Id.*

⁵⁸ 47 U.S.C. § 253(a).

⁵⁹ A ban of third-party billing, or even less restrictive measures such as opt-in or mandated blocking, would effectively eliminate the ability of many small telecommunications service providers (including 1+ Service providers) from entering the market. *See, e.g., CCTM Reply Comments* at 11-12.

IV. CONCLUSION

For the aforementioned reasons, the CCTM respectfully requests that the Commission adopt the positions and recommendations set forth herein.

Respectfully submitted,

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