

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

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges)	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**

Cheng-yi Liu

Fletcher Heald & Hildreth, PLC
1300 North 17th Street, 11th Fl.
Arlington, VA 22209
(703)812-0400
liu@fhhlaw.com

Counsel for Coalition for a Competitive
Telecommunications Market

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The Coalition for a Competitive Telecommunications Market ("CCTM"),¹ by its attorneys, submits these comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") *Public Notice* released on August 27, 2013 in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

The CCTM has actively participated throughout this proceeding, and the "noteworthy developments" discussed in the *Public Notice* do not alter the positions advanced in the CCTM's comments and reply comments submitted in response to the Commission's July 12, 2011 *Notice of Proposed Rulemaking* ("NPRM"),² and to the Commission's *Further Notice of Proposed*

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; 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*, 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 in response to the NPRM on October 24, 2011 ("*CCTM Initial Comments*") and reply comments on December 5, 2011 ("*CCTM Reply Comments*"). Both of these submissions are hereby incorporated by reference.

Rulemaking (“*FNPRM*”) on April 27, 2012.³ Indeed, the “noteworthy developments” further bolster the conclusion supported by the existing record that the Commission need not (and should not) implement additional regulations or opt-in requirements with respect to third-party billing of competitive, presubscribed 1+ wireline telecommunications services (“Competitive 1+ Service”).

As explained in previous filings, the CCTM supports efforts to eliminate cramming, but it opposes an opt-in approach with respect to third-party billing of Competitive 1+ Services.⁴ Such an approach for Competitive 1+ Services is unwarranted and not supported by the record. Significantly, the record contains no substantive evidence that Competitive 1+ Service providers are contributors to the cramming problem.⁵ On the contrary, the record reflects that third-party billing provides consumers with competitive alternatives, beyond a consumer’s existing LEC, for cost-effective Competitive 1+ Services while still retaining the convenience of consolidated billing.⁶ With respect to Competitive 1+ Services (and other telecommunications services), the Commission has recognized the “importance of consumer choice and benefits of legitimate third-party billing for consumers,” and that “the record is clear that some third-party charges are very

³ *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, 27 FCC Rcd 4436 (2012). The CCTM submitted initial comments in response to the *FNPRM* on June 25, 2012 (“*CCTM FNPRM Initial Comments*”) and reply comments on July 20, 2012 (“*CCTM FNPRM Reply Comments*”). Both of these submissions are hereby incorporated by reference.

⁴ Although the discussion herein is limited to 1+ Services, the CCTM generally opposes an opt-in requirement with respect to third-party billing of telecommunications services as a whole.

⁵ The record shows that non-telecommunications (*i.e.*, enhanced) services are primarily responsible for cramming. This is even more apparent now after the “noteworthy developments” have largely eliminated third-party billing of enhanced services by the major LECs.

⁶ See, e.g., *CCTM Comments* at 1-3; *CCTM Reply Comments* at 2-4.

beneficial.”⁷ Without readily available (and reliable) third-party billing services, consumers would essentially be deprived of viable, competitive (*i.e.*, non-LEC) alternatives for 1+ Services.⁸ Accordingly, the Commission should find that an opt-in approach to third-party billing of Competitive 1+ Services is unwarranted. Furthermore, certain other proposals are contrary to the public interest, such as those that would incentivize LECs to immediately remove third-party charges when a customer claims that the charges are unauthorized, without first consulting with the third party service provider. Lastly, while it may be necessary for the Commission to focus its attention on cramming of wireless services, the Commission must recognize that there are significant differences between wireless and wireline markets and services that render problems associated with wireless cramming not applicable to wireline telecommunications services. The Commission thus should not mistakenly apply remedies designed for cramming in wireless services to wireline services, and especially not to wireline Competitive 1+ Services.

II. THE COMMISSION SHOULD NOT ADOPT AN ADDITIONAL OPT-IN REQUIREMENT FOR THIRD-PARTY BILLING OF PRESUBSCRIBED COMPETITIVE 1+ WIRELINE TELECOMMUNICATIONS SERVICES.

The record still clearly establishes that the Commission should not adopt an additional opt-in mechanism for third-party billing of telecommunications services, most specifically, Competitive 1+ Services. Such a requirement is unnecessary, especially with respect to Competitive 1+ Services, and would create substantial burdensome regulatory requirements which would undermine competition and ultimately harm consumers. Such a result would also contradict the very principles that Chairman Wheeler has championed: the FCC “is a pro-

⁷ *FNPRM*, 27 FCC Rcd at 4469.

⁸ Third-party billing benefits consumers by facilitating access to a variety of competitive telecommunications services which might not otherwise be readily available. *See, e.g., CCTM Reply Comments* at 3.

competition agency” and competition “must be supported and protected if its benefits are to be enjoyed.”⁹

First, 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.¹⁰ This “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*,¹¹ as well as by the major LECs essentially eliminating third-party billing for non-telecommunications services.¹²

There is substantial evidence that these changes have significantly reduced the problem of cramming. For example, in the Commission’s April 2013 Workshop on Bill Shock and Cramming, Chris Paulen, a Vice President of Dimension Data, testified of finding a 60 percent decline in third-party charges/cramming on customer bills from the first quarter 2012 to the first quarter of 2013.¹³ Similarly, Glenn Reynolds, a Vice President of the US Telecom Association, noted that there had been a 90% decline in cramming inquiries received by the FCC from 2010-

⁹ *Opening Day at the FCC: Perspectives, Challenges, and Opportunities*, <http://www.fcc.gov/blog/opening-day-fcc-perspectives-challenges-and-opportunities> (last visited November 14, 2013).

¹⁰ *FNPRM*, 27 FCC Rcd at 4452.

¹¹ *See FNPRM*, 27 FCC Rcd. 4456-4466, and revisions to Sections 64.2400(b), and to 64.2401(a) and (f) of the Commission’s rules.

¹² *See, e.g.*, Letter from Timothy P. McKone, Executive V.P., AT&T, to Sen. John D. Rockefeller (March 28, 2012), filed in CG Docket No. 11-116. *See also*, Testimony of Lynne Follansbee, FCC Consumer and Governmental Affairs Bureau, at FTC Mobile Cramming Roundtable, May 8, 2013 (stating that in regards to the voluntary agreement of certain LECs to stop third party billing for non-telecommunications services, “we’ve seen a lot of [cramming] curbed by the industry on its own.”), *Transcript of FTC Roundtable*, <http://www.ftc.gov/bcp/workshops/mobilecramming/30508mob.pdf> at page 134 (last visited November 12, 2013).

¹³ *Transcript of Federal Communications Commission’s Consumer and Governmental Affairs Bureau Workshop on Bill Shock and Cramming*, <http://www.fcc.gov/events/workshop-bill-shock-and-cramming> (last visited November 8, 2013) at 77:30-77:49.

2012, in part due to changes in billing practices of certain local exchange carriers.¹⁴ As discussed below, additional burdensome restrictions on 1+ telecommunications services, especially an additional opt-in mechanism,¹⁵ are simply unnecessary (and unsupported by the record) at this time.

First, a consumer using *presubscribed* Competitive 1+ Services must have already provided affirmative consent to third-party billing. This constitutes an existing “opt-in mechanism” to such services. Furthermore, that existing opt-in mechanism is already subject to stringent FCC carrier change rules which were implemented to address “slamming” and, in part, cramming concerns.¹⁶ These rules require, among other things, verification of a consumer’s intent, typically through a written letter of authorization or recorded, independent third-party verification (“TPV”), before a Competitive 1+ Service provider may provide such services to the consumer. Many Competitive 1+ Service providers, including CCTM members, also implement additional industry developed safeguards, such as “callbacks” to a consumer’s primary billing telephone number, to further verify the legitimacy of the consumer’s identity and intent. Additionally, marketing efforts of Competitive 1+ Service providers, including CCTM members, generally highlight the benefits and convenience of consolidated billing (*i.e.*, third-party billing of competitive 1+ Services on the consumer’s LEC phone bill) as a key component of Competitive 1+ Service offerings. Moreover, the independent TPV scripts utilized by Competitive 1+ Service providers are typically required (by LECs or aggregators in third-party billing contracts) to specifically include language which states as follows: “Do you understand

¹⁴ *Id.* at 79:10 - 80:50.

¹⁵ 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.

¹⁶ *See* 47 C.F.R. § 64.1100 *et seq.*

that charges from [the Competitive 1+ Service provider] will appear on the [aggregator] bill page of your [LEC] bill?” Thus, Competitive 1+ Service providers already ensure, from the outset, that a consumer is aware that third-party billed 1+ Service charges will appear on the consumer’s LEC invoice.¹⁷

In other words, pre-subscription, along with existing FCC required and additional procedures and safeguards followed by Competitive 1+ Service providers to verify consumer authorization, essentially serve as an existing multi-layered opt-in mechanism. An additional opt-in mechanism, whereby a consumer must also give express consent to the LEC or another entity, is simply unnecessary.

Not only is it unnecessary, but an additional opt-in mechanism could easily be used in an anti-competitive manner by LECs. As background, it should be noted that Competitive 1+ Service providers operate in a market environment littered with anticompetitive hazards and obstacles. On top of navigating costly and burdensome federal (and state) regulations in order to simply obtain a customer, Competitive 1+ Service providers must compete directly with LECs, the gatekeepers of 1+ Services and the associated customer-base. Specifically, in providing Competitive 1+ Services, a service provider must, among other things: (1) contract with a LEC (directly or indirectly through another reseller) in order to obtain such services for resale; (2) rely on the LEC to properly effectuate an authorized change to a customer’s service provider; and (3) depend on the LEC to facilitate legitimate consumer requests to lift primary interexchange carrier (“PIC”) freezes. A requirement for an additional opt-in would give LECs

¹⁷ In fact, many consumers ultimately subscribe to Competitive 1+ Services to take advantage of this convenient third-party billing option. As explained in prior submissions, many small competitive providers of 1+ Services, including CCTM members, utilize third-party billing services both out of necessity (due to cost concerns) and because consumers expect (and often demand) consolidated billing of long distance services on their LEC phone bills. *See, e.g., CCTM Comments* at 1-3, 11-13; *CCTM Reply Comments* at 2-4.

even more control of the process, and would create possibilities for even more anticompetitive abuse. That is, the additional opt-in would give the LEC another chance to improperly attempt to “winback” the customer to its own services.¹⁸ The additional opt-in would also create incentives for the LEC to “slow down” the opt-in process, in hopes of discouraging the customer from signing up with the competitive provider. Indeed, that risk of customers being discouraged from using competitive services is enhanced by the fact that the requirement for the customer to go through an additional opt-in call is *itself* a burden that will discourage competitive choice.

Moreover, the evidence in the record shows that additional opt-in requirements for third-party billing of telecommunications services would be not only unnecessary and anti-competitive, but also in direct contradiction to consumer expectations.¹⁹ Consumers must already manifest specific and ascertainable intent to be third-party billed for Competitive 1+ Service and other telecommunications services,²⁰ rendering an additional opt-in mechanism completely redundant. In fact, consumers expect—and often demand—that charges for telecommunications services will appear on a single telephone bill.²¹

Furthermore, as NASUCA properly concluded, recognizing that the problem to be addressed is in fact *cramming itself*, and not necessarily third-party billing, is an important reality

¹⁸ See *CCTM Comments* at 8-12.

¹⁹ For example, both the public and government officials recognized that one of the harms suffered by consumers as a result of the Fire Island incident is that Verizon’s Voice Link substitute does not allow for the use or third-party billing of alternative long distance services. See, e.g., *Comments of New York Attorney General Eric T. Schneiderman* at 7- 8 (filed in WC Docket No. 13-150 on July 29, 2013).

²⁰ See, e.g., *Comments of Verizon and Verizon Wireless*, filed June 25, 2012 (*Verizon FNPRM Comments*) at 16; *Comments of Billing Concepts, Inc.*, filed June 25, 2012 (*Billing Concepts FNPRM Comments*) at 5.

²¹ See *Verizon FNPRM Comments* at 16; *CCTM Comments* at n. 12.

in determining the proper course of action.²² 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, and 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.²³ 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.²⁴

III. OTHER PROPOSED REGULATORY SOLUTIONS ARE UNDULY COMPLICATED AND CONTRARY TO THE PUBLIC INTEREST.

The Commission should not adopt any other proposed regulatory solutions which are unduly complicated, burdensome and contrary to the public interest. Some commenters have proposed alternative solutions which do not necessarily address the problem of cramming, and

²² Comments of National Association of State Utility Consumer Advocates, filed June 22, 2012 (“*NASUCA FNPRM Comments*”) at 4.

²³ *Id.* 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.”).

²⁴ However, should the Commission somehow decide that additional opt-in requirements for third-party billing are required, Competitive 1+ Services should be exempted. Alternatively, the Commission could also treat the Competitive 1+ Service provider’s verification of consumer intent to change service providers (pursuant to 47 C.F.R. § 64.1100 *et seq.*) as presumptive opt-in consent to third-party billing. If necessary, this intent could be explicitly ascertained through an additional question in a Competitive 1+ Service provider’s independent TPV script (or letter of authorization).

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.

For example, Virginia previously proposed 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.²⁵ Michigan advances a similar proposal to immediately, upon customer complaint, remove 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.”²⁶ These proposals are contrary to the public interest because they fail to recognize that not all customer complaints are valid. In light of that fact, Competitive 1+ Service providers should have the right to at least respond to an inquiry from the LEC before the LEC drops a disputed charge. In contrast, the Virginia and Michigan proposals create an unfounded presumption for a LEC unilateral determination that a billing complaint is always legitimate. 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.²⁷ 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.

²⁵ Comments of Virginia State Corporation Commission Staff, filed June 25, 2012, at 3.

²⁶ Comments of Michigan Public Service Commission, filed June 25, 2012, at 5.

²⁷ See *CCTM Comments* at 11-13. Furthermore, when LECs drop the collection of third-party billed charges, the LEC does not suffer any financial loss, but the Competitive 1+ service provider does. This can incent abuse from the LEC, which may be providing its own service competing with the 1+ provider.

Accordingly, the Commission should disregard such proposals and also confirm that LEC refusal to third-party bill for 1+ Services while disregarding evidence of customer authorization is anticompetitive and potentially in contravention of Commission policies.

Another example of a regulatory proposal that is contrary to the public interest is NARUC's request that the states be permitted to implement more stringent rules with respect to cramming and third-party billing of telecommunications services.²⁸ 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.²⁹ 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.³⁰ Without a uniform, federal standard, consumers and service providers would inevitably face a patchwork quilt of state-by-state regulations which add to the confusion regarding the type of cramming protections available.³¹ Accordingly, the CCTM reiterates its request that the Commission expressly confirm that Section 253(a) of the Communications Act³² prohibits states from enacting more stringent anti-cramming regulations. Such dual regulation would effectively serve as a barrier to entry for competitive telecommunications services.³³

²⁸ See *NARUC FNPRM Comments* at 8-10.

²⁹ 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.”).

³⁰ See *CCTM Reply Comments* at 12-13.

³¹ *Id.*

³² 47 U.S.C. § 253(a).

³³ See, e.g., *CCTM Reply Comments* at 11-12.

IV. PROBLEMS ASSOCIATED WITH CRAMMING ON WIRELESS BILLS ARE NOT APPLICABLE TO WIRELINE PRESUBSCRIBED 1+ SERVICES.

The *Public Notice* appears to be primarily concerned with developments after the *FNPRM* regarding cramming on bills for mobile wireless (CMRS) services. This is understandable, due to evidence that wireless cramming is on the rise. However, as discussed below, there are significant differences between wireless and the wireline markets and services that render problems associated with wireless cramming not applicable to wireline telecommunications services. Accordingly, the Commission should not mistakenly apply remedies designed for cramming in wireless services to wireline services, and especially not to Competitive 1+ Services.

In recent years, the market for wireless services has expanded consistently, while the market for wireline services has stagnated or declined. As a result, there are currently more U.S. wireless subscribers than household subscribed to wireline service,³⁴ and in 2012, 34 percent of adults in the U.S. lived in households with only wireless service (compared with approximately 15 percent of U.S. adults in 2008).³⁵ With the rapid growth of wireless services, it is appropriate that the Commission would focus its attentions on wireless cramming.

Nevertheless, it is important to recognize that consumers use their wireless phones in ways that are not matched by their use of wireline services. For example, consumers increasingly use their wireless phone accounts to make payments for a variety of services: games, ringtones, music, applications, and charitable donations. This behavior may leave wireless consumers more accustomed to seeing additional services billed to their wireless

³⁴ *E.g.*, compare *Telephone Subscribership in the United States*, FCC Wireline Communications Bureau, May 2011, at Table 1 (113.5 Million U.S. households with wireline telephone in July 2010); with *Sixteenth Mobile Wireless Competition Report*, FCC 13-34 (released March 21, 2013) at page 9 (285.1 million U.S. wireless subscribers at the end of 2010).

³⁵ *See, Sixteenth Mobile Wireless Competition Report, supra*, at page 26.

accounts, perhaps making them more vulnerable to cramming on those accounts. Additionally, security vulnerabilities in some mobile applications can lead to wireless cramming.³⁶ In particular, wireless texting, with its compact syntax and ability to include Internet links, facilitates cramming.³⁷ Such vulnerabilities do not exist in the context of wireline services.³⁸

In sum, while it is appropriate for the Commission to investigate and ameliorate wireless cramming, there are significant differences between the causes of wireless and wireline cramming, which accordingly should be addressed and remedied differently.³⁹ The Commission should not attempt to apply solutions for wireless cramming to wireline services, and particularly not to Competitive 1+ Services.

V. CONCLUSION

For the aforementioned reasons, the CCTM respectfully requests that the Commission adopt the positions and recommendations set forth herein, and in CCTM's previous filings in this docket. In particular, when looking for ways to reduce cramming, the Commission need not and

³⁶ See, e.g., Testimony of Derek Halliday, Product Manager at Lookout Mobile Security, FTC Mobile Cramming Roundtable, May 8, 2013 (78 percent of mobile malware oriented to perpetrating toll fraud), *Transcript of FTC Roundtable*, <http://www.ftc.gov/bcp/workshops/mobilecramming/30508mob.pdf> at page 79 (last visited November 12, 2013).

³⁷ Some of the wireless malware that triggered cramming discussed by Mr. Halliday, *supra*, specifically involved the fraudulent use of text messages.

³⁸ Moreover, unlike third-party billed wireless services, Competitive 1+ Services are a regulated by the Commission and state public utilities commissions.

³⁹ See, e.g., Testimony of Melanie Tiano, Investigative Counsel to Senate Commerce Committee, at FTC Mobile Cramming Roundtable, May 8, 2013 (Discussing separate Commerce Committee investigation of wireline and wireless cramming because “there were distinct differences between the technologies of wireline and wireless.”), *Transcript of FTC Roundtable*, *supra*, at page 138 (last visited November 12, 2013).

should not adopt an additional opt-in mechanism for third-party billing of Competitive 1+ Services.

Respectfully submitted,

/s/Cheng-yi Liu
Cheng-yi Liu

Counsel for Coalition for a Competitive
Telecommunications Market

Fletcher Heald & Hildreth, PLC
1300 North 17th Street, 11th Fl.
Arlington, VA 22209

(703)812-0400
liu@fhhlaw.com

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