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

COMMENTS OF PREFERRED LONG DISTANCE, INC.

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Preferred Long Distance, Inc. ("PLD") submits these comments in response to the request by the Commission's Consumer and Governmental Affairs Bureau to refresh the record regarding "cramming" in the above dockets.[1]

INTRODUCTION

PLD is a small, family-owned competitive local exchange and interexchange carrier based in Encino, California. PLD entered the market, initially, in California as an interexchange carrier in 1995. Since, then, PLD has expanded its operations to include the provision of interexchange services and local exchange in a number of states. Service offerings delivered by PLD have saved consumers hundreds of thousands, if not millions, of dollars since PLD first began providing service. Moreover, competition from PLD has placed market pressure

[1] *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, Public Notice, DA 13-1807, rel. August 27, 2013.

on other telecommunications providers, resulting in higher quality and lower cost service to consumers everywhere that PLD provides service.

PLD currently serves approximately 30,000 customers, all of whom are small to mid-size businesses. A little less than half of PLD's customers receive both local and long distance service from PLD; the remainder subscribe only to PLD's long distance service. PLD provides long distance service solely on a presubscribed, 1+ basis. PLD does not provide casual calling, dial-around service.

In cases where PLD is providing long distance service on a stand-alone basis, i.e., not in conjunction with PLD's local service, PLD prefers to bill its customers through direct invoices. However, a majority of customers, in PLD's experience, demand a single invoice for their telecommunications services. In such cases, PLD must rely on more-expensive, third-party billing arrangements with incumbent local exchange carriers ("LEC-billing"). Indeed, PLD has over 15,000 LEC-billed customers. If PLD does not provide these customers with the option of LEC-billing, it will lose them as customers.

Consequently, PLD is deeply concerned with the potential adoption of an opt-in requirement or other measures that could adversely affect its ability to utilize LEC-billing for its services. Such requirements, if adopted, would harm consumers either by denying them the ability to obtain single-invoice billing for their telecommunications services or by severely limiting the number of carriers from whom they are able to select services. In addition, such requirements would obviously result in significantly harm PLD's business, and jeopardize the positions of hundreds of individuals who serve PLD, either as employees of PLD or as employees of its vendors.

A. THERE IS NO CALL FOR APPLYING AN OPT-IN REQUIREMENT AS A PREREQUISITE TO USE OF LEC-BILLING CHARGES FOR THIRD-PARTY CARRIERS' PRESUBSCRIBED 1+ LONG DISTANCE SERVICE

Neither before the Commission adopted its rules addressing wireline cramming[2] nor since then, has there been any evidence of any need or call for a requirement that consumers provide their serving LECs with specific authorization before the LECs may include third-party carriers' charges for presubscribed long distance services on their bills. Indeed, comments the Commission received from key consumer representatives in response to the Further Notice implicitly or expressly recognize that billing for presubscribed, 1+ long distance service should be excepted from third-party billing restrictions.[3]

Quite plainly, there is general acknowledgment that the Commission's carrier change verification rules, 47 C.F.R. § 64.100 et seq., work well to prevent slamming (and associated unauthorized billing, whether direct or LEC-billed) and also provide excellent remedies when violations due occur.[4]

Thus, there simply is no need for the Commission to impose on carriers or consumers an opt-in requirement before third-party carriers' charges for presubscribed, 1+ long distance services can be billed on LEC invoices. Moreover, such a requirement could well have unintended consequences on consumer choice. As one earlier commenter explained:

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[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, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436 (2012).

[3] *See, e.g.,* Reply Comments of the National Association of State Utility Consumer Advocates in Response to Further Notice of Proposed Rulemaking (July 20, 2012), at pp. 11-15, addressing exceptions to proposed third-party billing prohibition.

[4] PLD believes that slamming, today, is unintentional in most cases. The advent of strict liability for violations of verification rules, automatic revenue disgorgement requirements, and the potential for heavy fines, along with truth-in-billing requirements and ever-vigilant competitors, eliminates slamming as an effective business strategy.

> [An] opt-in requirement would wreak havoc on consumer expectations and their telecommunications experience. Psychologists have firmly documented consumers' propensity to select a default option, even when it is less advantageous. As a result of "default bias," untold numbers of consumers will fail to opt-in to third-party service options, and thereby be deprived of alternative telecommunications options.[5]

Accordingly, no changes to the wireline anti-cramming rules adopted two years ago should be made at this time.

B. A RULE MANDATING OR EVEN ALLOWING LEC'S TO IMPOSE AN OPT-IN REQUIREMENT AS A PREREQUISITE TO LEC BILLING FOR THIRD-PARTY PRESUBSCRIBED 1+ LONG DISTANCE SERVICE WOULD UNNECESSARILY INVITE POTENTIAL ANTI-COMPETITIVE ABUSES

With LECs having the ability to compete against providers of stand-alone presubscribed long distance services, LECs would have incentives to use third-party-billing opt-in procedures to lock out competitors or to unfairly advantage themselves, their affiliates, or other favored long distance service providers just as in the case of PIC freezes.[6] Indeed, requiring customers to contact the LECs in order to opt in to third-party billing is hardly different from requiring them to lift PIC freezes or from allowing LECs to re-verify PIC selections.[7]

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[5] Comments of Billing Concepts, Inc. (June 25, 2012), at 9-10 (footnote omitted, citing Nikhil Dhingra, et al., *The default pull: An experimental demonstration of subtle default effects on preferences*, 7 Judgment and Decision Making 69 (Jan. 2012), and William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 Journal of Risk and Uncertainty, 7 (1988).

[6] *See*, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, (rel. December 23, 1998) ¶ 116 ("(I]incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier.")

[7] *See*, *id.*, ¶ 99, rejecting PIC re-verification as providing LECs with "both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates."

For this reason, and given the absolute lack of any need for an opt-in process, it would be imprudent for the Commission to permit LECs to utilize such a process, much less require them to do so. However, if the Commission nevertheless elects to require or permit LECs to impose opt-in processes on consumers, the Commission must, at the same time, take reasonable steps to limit the potential anti-competitive consequences of its doing so.

First, any opt-in requirement should be implemented on a neutral, nondiscriminatory basis. Specifically, such procedures should apply equally to LECs' billing for their interexchange carrier affiliates and their billing for other long distance carriers, and the procedures should be the same for all subscribers.

Second, the Commission should explicitly confirm that a customer's decision to opt in to third-party billing for presubscribed, 1+ long distance service constitutes customer proprietary network information (CPNI) such that the LEC receiving such information is prohibited from using or disclosing the customer's decision to its affiliates or other long distance carriers for winback purposes.

Although such measures would help curb some of the anti-competitive impacts of an opt-in requirement, PLD emphasizes that they would not fully mitigate the adverse impact on the public interest that is inherent in the imposition of any unnecessary hurdle or other impediment to the ability of consumers to freely exercise their choice of carriers.

CONCLUSION

For the reasons expressed above, PLD urges the Commission to reject any requirement that LECs required consumers to affirmatively opt into third party billing as a prerequisite to the provision of LEC-billing for presubscribed, 1+ long distances services, and also to prohibit ILECs from imposing such a requirement voluntarily. Given the lack of any real

need for an opt-in requirement, imposing or allowing LECs to impose such a requirement would unduly burden consumers and the competitive marketplace.

Respectfully submitted November 18, 2013.

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