

**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

ADDITIONAL COMMENTS OF U.S. TELECOM LONG DISTANCE, INC.

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Distance, Inc.

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ADDITIONAL COMMENTS OF U.S. TELECOM LONG DISTANCE, INC.

U.S. Telecom Long Distance, Inc. ("USTLD" or "Company"), submits the following additional comments¹ in response to the Commission's August 27, 2013 *Public Notice* in the above-captioned proceedings.² USTLD commends the Commission for its approach in eliminating the unscrupulous practice of "cramming." Rule amendments promulgated to preclude cramming through this proceeding have explicitly distinguished between service charges billed on behalf regulated telecommunications carriers that maintain an ongoing relationship with their subscribers and charges "from parties for non-telecommunications services."³ This important distinction has enabled telecommunications service providers such as USTLD to continue providing cost-effective interexchange services to its subscribers through

¹ See, *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, Comments of U.S. Telecom Long Distance, Inc. (October 24, 2011)(*USTLD Comments*)

² *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record Regarding "Cramming,"* CG Docket No. 11-116 and 09-158; CC Docket No. 98-170, DA 13-1807, Public Notice (August 27, 2013)(*Public Notice*).

³ 47 C.F.R. §64.2401 (a)(3). USTLD has characterized this distinction as one between verified telecommunications charges and unverified third party charges. *USTLD Comments*.at 1.

incumbent local exchange carrier (“ILEC”) billing arrangements, while effectively eliminating cramming of unregulated service charges.

If the Commission maintains that additional regulations are required to further preclude the potential for cramming, USTLD urges the Commission to retain this critical explicit distinction between regulated, verified telecommunications services, and unregulated, unverified services that are billed through third parties. Such a distinction will become particularly critical if consumer opt-in requirements are adopted. Should the Commission ultimately adopt consumer opt-in provisions, such provisions should apply exclusively on unverified incidental third party charges, where there is no ongoing relationship between a service provider and subscriber.

I. INTRODUCTION

USTLD is one of the oldest remaining independent non-facilities-based interexchange telecommunications service providers, primarily serving residential subscribers. One of the key factors in the Company’s more than sixteen years of successfully providing desirable, cost-effective interexchange services to the public has been its reliance on ILEC billing. Through its third party billing arrangements with major ILECs, USTLD has significantly reduced internal billing costs and been able to pass on savings on to its subscribers in the form of lower, competitive rates. And subscribers have benefited from the convenience of receiving a single invoice containing the Company’s interexchange service charges⁴ and ILEC local exchange charges.

In its original comments, USTLD stressed the importance of clearly distinguishing between third party billed verified and unverified charges, *e.g.* between regulated and

⁴ USTLD charges subscribers exclusively for interexchange telecommunications services it provides and for no other services.

unregulated service charges, so that interexchange service provided under ILEC billing arrangements would not be foreclosed or subject to potential ILEC anti-competitive behavior.⁵ The Commission's resulting rule amendments simply and effectively adopted such a distinction. As promulgated, these amendments preserved the ability of companies like USTLD to continue relying on ILEC billing, while precluding unauthorized, unverified third party billing of incidental services from entities that maintained no ongoing relationship with the public. Further, this important distinction has limited the potential for ILECs to engage in unfair win back efforts through an overly aggressive interpretation of Commission rules when billing on behalf of interexchange carriers, a concern USTLD raised in its original comments.

The clear distinction between verified and unverified charges adopted under the promulgated rule amendments obviates the need for rule amendments governing the provision of ILEC-billed wireline interexchange services. Should further consumer "opt-in" third party billing requirements be adopted, such requirements should retain the distinction between verified and unverified charges in applying exclusively to unverified third party charges. In the absence of such a distinction, the specter of ILEC anti-competitive win back and blocking efforts against companies like USTLD in a purported effort to protect consumers from cramming is again manifest.

⁵ "The absence of a distinction between verified and unverified charges in the applicability of the proposed charge blocking provisions unfairly exposes legitimate common carriers that maintain documented service verifications to the same fate as all other third party vendors that do not assume an obligation to verify accounts and account charges." *USTLD Comments* at 3.

II. BILLING OF REGULATED INTEREXCHANGE SERVICES UNDER THIRD PARTY BILLING ARRANGEMENTS IS NOT EQUIVALENT TO BILLING OF UNREGULATED, UNVERIFIED INCIDENTAL CHARGES.

In its original comments, USTLD stated that third party billing of verified telecommunications service charges and unverified service charges were not the same.⁶ USTLD stressed that regulated providers electing to bill subscribers for interexchange services under ILEC billing agreements are not similarly situated to unregulated entities that have provided incidental services to consumers. This important difference remains unchanged as further anti-cramming provisions are considered.

Inherent protections established under the Commission's account transfer regulations, 47 C.F.R. §§64.1100 *et seq.*, Commission enforcement, and in some instances, more onerous state account transfer regulations, already effectively protect subscribers from unauthorized charges by regulated carriers. To be sure, interexchange carriers are also subject to a myriad of additional federal and state regulations including certification, financial surety, and operational requirements governing their operations to protect consumers. Similar protections and regulations have not existed for incidental unregulated service third party billing prior to the Commission's rule amendments. Further, unlike incidental service providers, carriers maintain an ongoing relationship with their subscribers that unregulated entities service providers do not. The risk of cramming has arisen almost exclusively from unregulated service providers.⁷

The Commission has explicitly acknowledged the critical distinction between third party billing of verified telecommunications service charges and unverified service charges.⁸ USTLD

⁶ *Ibid.*

⁷ Although the Notices of Apparent Liability cited by the Commission constituted cramming due to billing through a billing aggregator, the fact remains that the cited companies also engaged in unauthorized account transfers in violation of Commission account transfer regulations. *Cramming Order and Further Notice* at ¶ 23.

⁸ "In the NPRM, we proposed to require wireline carriers that offer consumers the option to block **non-carrier third-party charges** from their telephone bills to clearly and conspicuously notify consumers of this option at the

commends the Commission for doing so. As adopted, the anti-cramming rule amendments have not precluded interexchange carriers from billing their subscribers under ILEC billing arrangements. This distinction between “non-carrier third party charges” and carrier charges billed on behalf of regulated interexchange service providers under ILEC billing agreements has preserved the ability of USTLD and other telecommunications carriers to maintain an effective, long-standing reliance on ILEC billing to benefit its subscribers. Indeed, the Commission recognizes the consumer benefits of these billing arrangements.⁹ Any further amendments to the Commission’s anti-cramming rules, if adopted, should preserve the distinction between regulated and unregulated non-carrier charges. And additional anti-cramming rule amendments should also preserve consumer interexchange services choices.

III. ANY FURTHER RULE AMENDMENTS, IF DEEMED NECESSARY, SHOULD BE CLEAR IN THEIR EXCLUSIVE APPLICABILITY TO THIRD PARTY BILLING OF UNREGULATED SERVICES.

The *Public Notice* requests comment on whether the Commission should take additional steps to prevent wireline cramming, including requiring carriers to obtain a consumer’s affirmative consent before placing third party charges on bills (i.e., “opt-in”).¹⁰ USTLD

point of sale, on each bill, and on their websites to prevent cramming before it occurs [emphasis supplied].” *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 98-170, *Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Rcd 4436 (2012) (Cramming Order and Further Notice) ¶ 51 (citing to NPRM, 26 FCC Rcd at 10038, ¶¶40-41) and ¶ 75.

⁹ “The record reflects that third-party billing can be a convenience for carriers, third parties, and consumers, and there are some legitimate uses for third-party billing by wireline telephone companies, such as billing charges for bundled services and for long distance service on consumers’ local telephone bills.” *Cramming Order and Further Notice* ¶ 41. Indeed the ability of interexchange service providers to pass along the savings associated with ILEC billed services creates additional competitive pressure on all providers to keep interexchange rates low. At a time of declining margins for interexchange services, some carriers have increased wireline interexchange service charges whether to increase profits or to drive subscribers to the provider’s own more lucrative wireless services. Monthly recurring charges of \$5.00 or more for certain calling services are not uncommon (See, *i.e.* Verizon Five Cents Plan: “Simplify your long distance calling with the Verizon Five Cents Plan which has a Monthly Recurring Charge of \$6.00 and a state-to-state rate of only \$0.05 per minute. Requires Minimum Monthly Charge (MMC) of \$9.99.” <http://www.verizon.com/home/phone/#callingplans>)

¹⁰ Public Notice at 1, citing to the *Cramming Order and Further Notice*.

maintains that no additional rule amendments governing third party billing for regulated telecommunications services providers are necessary.

Since adoption of the anti-cramming rule amendments, USTLD has experienced no resulting adverse effect on its operations, on its relationship with subscribers, or more aggressive ILEC win back efforts, as originally feared. The distinction between third party billing of regulated telecommunications services provided by carriers and unregulated incidental services provided by others has been effective in precluding cramming without undermining a valuable ILEC billing capability for telecommunications providers, as USTLD has noted.

Yet the distinction between regulated and unregulated service charges that underlie the Commission's anti-cramming rule amendments has seemingly not been fully adopted by some ILECs when interacting with subscribers. This poses an anti-competitive threat to an opt-in requirement that should be addressed, if further opt-in requirements for unregulated third party charges are considered.

Prior to adoption of the anti-cramming rule amendments, USTLD experienced instances where it had been subject to erroneous unauthorized account transfer, e.g. "slamming," complaints resulting from subscribers who were led to believe by ILEC representatives that the Company's charges were not authorized. When asked by an ILEC customer service representative if a subscriber¹¹ agreed to charges by the USTLD's billing aggregator or the Company's underlying carriers rather than USTLD by name, those who are unaware of USTLD's billing aggregator or underlying carriers would deny that the charges were authorized. This resulted in an erroneous unauthorized account transfer complaints.

With the adoption of anti-cramming rule amendments, the potential that charges for services other than presubscribed telecommunications services has been all but eliminated.

¹¹ In some instances, the person contacted is not the authorized subscriber who initiated a change in primary carrier.

ILEC customer service representatives who formerly tended to consider any third party billing to be unauthorized, now recognize ILEC-billed third party services as regulated telecommunications services. Yet ILEC representatives may still not know the identity of a customer's presubscribed interexchange service provider if the provider is a non-facilities-based reseller.¹² ILEC customer service representatives may still unwittingly lead subscribers to believe that ILEC-billed third party charges represented a case of slamming if identifying the reseller's underlying carrier as the service provider. The underlying carrier's identity is likely unknown to the subscriber. This situation still contributes to cases of erroneous slamming complaints.

If adopted, overly broad consumer third party billing opt-in requirements could be interpreted by ILEC representatives to apply to presubscribed telecommunications services. Telecommunications service subscribers could then be led believe that they have been subject to erroneous service charges, and persuaded to block all third party charges including legitimate presubscribed telecommunications service charges. Third party bill blocking would effectively act as a "PIC Freeze." Subscriber access to legitimately presubscribed competitive interexchange services would be precluded at the subscriber's unwitting request without the subscriber's complete understanding of the legitimacy of the interexchange service charges for services they subscriber elected and the ramification of their actions.

The Commission's account verification regulations in section 64.1120 specifically, constitute the subscriber's agreement to be charged for those telecommunications services the subscriber has chosen. A subscriber's affirmative, verified election of telecommunications services for which the subscriber is billed is equivalent to the opt-in agreement the Commission

¹² ILEC representatives must take the additional step of verifying the subscriber's authorized telecommunications service provider when asking the subscriber to verify the validity of ILEC billed telecommunications service charges.

is considering for incidental third party charges. To the extent that telecommunications service subscribers have effectively “opted-in” to be charged for these verified services, any opt-in provisions that may be adopted for unregulated incidental services would be inapplicable to subscriber-elected telecommunications services, and therefore unnecessary.

IV. CONCLUSION.

USTLD commends the Commission for its efforts to preclude cramming, while acknowledging the benefits of legitimate ILEC-billed regulated, verified telecommunications services. ILEC billing of legitimate interexchange services has enabled the public to benefit from competitively-priced interexchange services and the convenience of a single bill, as the Commission has acknowledged.

The Commission has in this proceeding recognized “the importance of consumer choice and benefits of legitimate third-party billing for consumers, carriers, and third parties.”¹³ If additional opt-in requirements are adopted, such requirements must clearly maintain the distinction between regulated and unregulated services in applying exclusively to unregulated services. Failure to do so may well open a Pandora’s Box to anti-competitive behavior. Rule amendments intended to further preclude cramming should not inadvertently enable ILECs to aggressively pursue consumer blocks of all third party billing, including legitimate ILEC billed interexchange carrier charges, as USTLD has experienced. Opt-in agreements, in particular, are unnecessary for regulated telecommunications services as subscribers already affirmatively agree to be billed for services they elect subject to account verification regulations. To that end, the Commission should explicitly clarify that any opt-in and/or third party bill blocking apply exclusively to un-regulated, incidental services.

¹³ *Cramming Order and Further Notice* ¶ 90.

Respectfully submitted this 18th day of November, 2013.

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A handwritten signature in blue ink, appearing to read "Andrew O. Isar".

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