Before the
Federal Communications Commission
Washington, DC 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	)	CG Docket No. 98-170

COMMENTS OF VALLEY YELLOW PAGES

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COMMENTS OF VALLEY YELLOW PAGES

AGI Publishing, Inc., d/b/a Valley Yellow Pages ("Valley"), hereby submits these late-filed comments in response to the Public Notice of the Consumer and Government Affairs Bureau seeking to refresh the record in the Commission's "cramming" docket.[1]

In the interest of having as complete and accurate a record as possible, Valley asks the Commission to waive the requirements of Section 1.46(b) of its rules and consider these comments as having been timely filed.[2] To assure that all parties have the opportunity to consider and respond to Valley's comments in preparing their replies, Valley will email a copy of these comments to all parties that filed comments in response to the Commission's *Notice* within one business day of this filing.

INTRODUCTION & SUMMARY

Valley applauds the Commission's commitment to protect the public from cramming. Under the definition, cramming involves the placement of unwanted and unauthorized charges

[1] *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record Regarding "Cramming,"* Public Notice, CG Dkt. Nos. 11-116, 09-158, 98-170 (Aug. 27, 2013) ("Notice").

[2] 47 C.F.R. § 1.46(b); *see also id.* § 1.1206 (discussing Commission's authority to consider ex parte filings in permit-but-disclose proceedings).

on customer phone bills.[3] ***Authorized*** charges, however, do not implicate the Commission's cramming policies. Indeed, as the Commission has found, "consumers can benefit from legitimate third-party billing."[4] Indeed, the benefits of LEC third-party billing services go well beyond "billing charges for [only] bundled services and for long distance service."[5] Valley's service offerings and its use of local exchange carrier ("LEC") Billing and Collection services,[6] is illustrative of these benefits. Valley is the largest independent publisher of print yellow page directories in Northern California and is the third largest such provider in the United States. Valley's business customers all enter into written contracts for advertisements in Valley's yellow pages and have authorized Valley's charges. Approximately one-third of Valley's customers are billed through their LEC's Billing & Collection services – an approach that has proved convenient for both Valley and its customers. In seventeen years of charging its directory advertising customers via LEC Billing and Collection services, complaints of cramming by Valley's customers have been virtually nonexistent.

Accordingly, Valley, along with many other participants in this proceeding, strongly oppose any rule changes by the Commission that would unnecessarily restrict LEC Billing and Collection services where cramming is not an issue. For example, Valley opposes the imposition of an "opt-in" process that would require customers to affirmatively register their consent with

[3] *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, ¶ 1 (2012) ("*Cramming Order*" and "*Further Notice*").

[4] *Id.* ¶ 86.

[5] *Id.* ¶ 41.

[6] "Billing and Collection Service" is the name that AT&T gives to its third-party billing service, which AT&T provides pursuant a state tariff. AT&T Schedule Cal. P.U.C. No. 175-T Access Service, Section 8.5.

the billing LEC. Valley has concerns about how such a program would be administered and believes that the cost of creating automated opt-in mechanisms could lead LECs to "opt-out" of their Billing and Collection services altogether.[7] This "throw the baby out with the bathwater" approach to reducing cramming would effectively eliminate the consumer benefits which the Commission has found are associated with LEC Billing and Collection services. In the same vein, Valley is concerned by recent announcements by Verizon and AT&T that they plan to "cease providing wireline billing services to third parties that … offer services that are unrelated to the use of Verizon's network."[8] These unilateral actions by billing LECs raise a host of competitive and legal concerns, which we address below.

Rather than adopting rules that could effectively, if not explicitly, end third-party billing options altogether, the Commission should, instead, adopt incremental reforms and then evaluate the effectiveness of those measures before making wholesale, unnecessary and potentially disruptive changes. Valley has three ideas for the Commission to consider. First, the Commission should require all third-parties that seek to utilize LEC Billing and Collection services to obtain the end-user customer's consent before doing so. Addressing fraudulent billing directly in this manner is the best and most direct approach to the problem. In the same vein, the logical next step after the *Cramming Order* required carriers to inform customers about the availability of blocking options (if they have them), is to require carriers to actually ***offer*** blocking mechanisms. Finally, if the Commission believes that an affirmative opt-in process should be adopted, it should, at a minimum, create an exception for business customers that enter

[7] *See* AT&T Comments at 6-8, CG Docket No. 11-116 (June 18, 2012) (estimating costs of hundreds of millions of dollars).

[8] Comments of Verizon and Verizon Wireless, CG Dkt. No. 11-116 (June 25, 2012) at 1.

into written contracts for services, as they are much less likely to be victims of cramming than residential consumers.

Whatever approach the Commission takes, considerations of fairness and, above all, parity and nondiscrimination, should be paramount. LECs should not be permitted to prohibit third-parties from utilizing their Billing and Collection services while, at the same time, allowing affiliates in directly competing businesses to take advantage of this very convenient billing mechanism. In particular, a LEC should not be permitted to provide billing service for its yellow pages affiliate while preventing competitive directory providers, like Valley, from doing the same. Not only would such a practice contravene nondiscrimination obligations under Section 202(a) of the Communications Act of 1934, as amended ("Act"), it would violate the spirit, if not the letter of sections 222(e) and 251(b)(3), which were enacted specifically to promote independent (*i.e.*, non-LEC affiliated) directory publishing businesses.

For all these reasons, as explained more fully below, the Commission should tread carefully in establishing new anti-cramming requirements that might unintentionally hurt third-party businesses, in general, and directory publishing businesses, like Valley's, in particular.

DISCUSSION

I. A Customer Consent Requirement Is Sufficient to Reduce Cramming

The *Notice* asks whether, as a measure to reduce cramming, the Commission should impose an opt-in requirement and, if so, how it should be implemented. To the extent that "opt-in" means that third-party providers should be required to obtain their customers' consent for the purchase of goods or services prior to invoicing them through the LEC's Billing and Collection service, Valley endorses such an approach. Customer consent should be a given, just as agreement on payment terms is required in all contractual relationships.

Valley is concerned, however, about proposals that would require the billing LEC to play a role in supervising the opt-in process.[9] LECs should not be required to establish separate procedures to collect, verify, and maintain customer consents to third-party billing. Such a requirement would impose a significant burden on billing LECs and consumers alike, which could make LEC Billing and Collection services impossible to implement as a practical matter. An opt-in requirement would also be of questionable effectiveness. As we see it, there are two ways the Commission could implement an opt-in requirement – (1) a blanket approach, or (2) a transactional approach. Under the blanket approach, customers would agree to accept any third party charge made to their bills. But this would not be an effective way to combat cramming because the mere fact that a customer has agreed to third party charges, generally, says nothing about whether a particular charge was authorized or not. Under the transactional approach, on the other hand, a customer would have to agree to accept third party charges on a transaction-by-transaction basis. This would be burdensome and expensive to implement, and would almost certainly have a negative effect on providers like Valley. It would also impose such a significant burden on billing LECs, who would have to establish procedures to process these third-party opt-ins, that Valley can envision them choosing not to offer the service at all.[10]

More importantly, neither approach addresses the real problem. The problem of cramming is fraudulent billing and the Commission should address that problem directly by expressly requiring third-parties that use LEC Billing and Collection services to obtain the customer's consent before doing so. The local number portability / service provider change

[9] *See Further Notice* ¶ 141.

[10] *See* AT&T Comments, *supra*. Valley would also be concerned about placing an affiliate of its competitor in this gatekeeping role, where its neutrality would be questionable and largely immune from oversight.

process ("LNP") provides a model for how the customer consent requirement advocated here could work.[11] Under the LNP process, an "old service provider" is required to facilitate a new service provider ("NSP") porting request, but is not required – indeed, it is precluded from seeking – to confirm the end-user's desire to transfer service. The obligation to assure the customer's consent rests with the NSP. If it turns out that consent was not obtained – or more to the point, if the NSP cannot prove that consent was obtained – then the NSP is guilty of slamming. An end-user is not required to "opt-into" the right to have her service ported, although she may place a freeze on her account that prevents a port from taking place until the freeze is affirmatively lifted.[12]

The Commission should adapt the LNP-consent process to LEC Billing and Collection services. LEC agreements with its Billing and Collection customers should include provisions mandating that end user consent be obtained and the burden to prove consent should rest with the third-party biller. Failure to comply with this requirement would constitute a breach of contract with the billing LEC and a violation of Commission rules, which the Commission could enforce against non-carriers through its Title I "ancillary jurisdiction" enforcement powers. Third-parties that are found to have engaged in a pattern and practice of willfully violating the consent requirement would be precluded from using the LEC's Billing and Collection service.

The Commission should also consider extending the *Cramming Order*'s requirement that customers be notified of the blocking options available to them (if any) by actually requiring

[11] *See Further Notice* ¶ 140 (asking if "there are analogous opt-in requirements, either in communications or other industries").

[12] *See* 47 C.F.R. § 64.1100, *et seq.*

carriers to offer blocking. It is likely that an affirmative, contractual consent requirement, along with a mandated blocking option, will reduce cramming considerably.

If the Commission, nonetheless, believes that an affirmative opt-in requirement should be adopted, it should exempt business customers from the process. The Commission specifically observed that small businesses, in particular, enjoy the convenience of having charges placed on their telephone bill, as opposed to receiving many separate bills from individual service providers, since they often do not have dedicated accounts receivable departments.[13] Many of Valley's customers advertising in its yellow pages are precisely such small businesses that enjoy the administrative convenience and savings that LEC Billing and Collection services provide. Moreover, the use of written contracts for business services significantly reduces the possibility of cramming on a wide scale basis. Indeed, it is Valley's experience that cramming is virtually non-existent in the directory publishing industry.

II. The Commission Should Recognize The Special Concerns Of The Directory Publishing Business

For the reasons explained above, Valley is concerned about the imposition of an onerous opt-in requirement that would inconvenience customers and disrupt business operations. More importantly, though, Valley is concerned that it not be placed at a competitive disadvantage vis-à-vis directory publishers that are affiliated with the incumbent LECs, who might be able to continue using their affiliate's Billing and Collection services. Indeed, in their statements announcing their plans to discontinue third-party Billing and Collection services, Verizon and AT&T have indicated that will continue to provide the service for their affiliates, include affiliated directory publishing operations. This discriminatory policy should not be permitted. If

[13] *Id.* ¶ 86.

LECs provide Billing and Collection services to their own directory publishing affiliates, then they should be required to provide the same service, on the same rates, terms and conditions, to non-affiliated publishers like Valley.

Permitting LECs to favor their publishing affiliates would violate the general nondiscrimination requirements of Section 202(a) of the Act, which prohibits "any common carrier" from "mak[ing] or giv[ing] any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or … subject[ing] any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[14] As noted above, approximately one-third of Valley's customers prefer being billed through their LEC's billing platform. Assuming that the same is true of its competitors' customers, Valley would be placed at an obvious disadvantage if its competitors are permitted to continue billing customers through their affiliates' LEC Billing and Collection services while Valley is not.

Moreover, unlike few, if any, other third-party that utilizes LEC Billing and Collection services, independent directory publishers' businesses have been specifically sanctioned and encouraged by the federal communications laws. In particular, Sections 222(e) and 251(b)(3) of the Act were aimed at loosening the monopoly power that incumbent LECs had long held over the directory publishing business, and the leverage that power gave them in the adjacent local exchange telephone market.[15] One of the bases for LEC control over directory publishing was

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[14] 47 U.S.C. 202(a).

[15] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) ("*SLI/DA Order*").

their total control over the directory listing information (name, address, and telephone number) of their customers. Without access to this information – the raw material of a directory – there was no way for independent directory publishers to enter the market.

To help combat this market power, which the Commission characterized as a "failure in the market,"[16] Congress enacted Sections 222(e) and 251(b)(3) as part of the Telecommunications Act of 1996. Under Section 222(e), all telecommunications carriers are required to make their customers' "subscriber list" information available to any directory publisher on reasonable and nondiscriminatory terms.[17] Section 222(e) promotes competition in the directory business by obligating LECs to provide directory listings to any person that wants to publish a directory, which means that anyone can enter the directory publishing business. (Valley has been purchasing listings pursuant to this law to the present day.) Under Section 251(b)(3), all LECs must provide other LECs with "nondiscriminatory access to ... directory listing[s],"[18] which means that LECs can't use their power over directories as a competitive advantage over other LECs.[19]

While LEC Billing and Collection services are not directly addressed by Sections 222(e) or 251(b)(3), these provisions reflect the Congressional policy of promoting independent directory publishing businesses. They also serve as a policy backdrop for any action the

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[16] *Id.* ¶ 86.

[17] The FCC has held that the "subscriber list" information referred to in Section 222(e) and the "directory listing" obligation of Section 251(b)(3) refer to the same information.

[18] 47 U.S.C. § 251(b)(3).

[19] *SLI/DA Order* ¶ 160. The Commission has interpreted the term "directory listing," as used in Section 251(b)(3), to mean "the act of placing a customer's listing information in a directory assistance database or in a directory compilation for external use." *Id.* Thus, among other things, LEC may not exclude other LEC customer's listings from its directories.

Commission might take that might unintentionally disadvantages independent directory publishers. In light of these policies, the Commission should make sure that any rules adopted in this proceeding do not negatively impact the independent directory publishing industry.

III. CONCLUSION

Valley urges the Commission to adopt policies consistent with these Comments.

Respectfully submitted:

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