

**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 BILLING CONCEPTS, INC.

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Billing Concepts, Inc., doing business as BSG Clearing Solutions (“BSG”), respectfully submits the following reply comments regarding comments filed in response to the Commission’s request for additional information issued in the above-referenced dockets on October 3, 2013.¹ In particular, BSG writes to address the flaws in certain commenters’ support of an “opt-in” requirement for third-party telecommunications charges placed on consumers’ wireline telephone bills.

EXECUTIVE SUMMARY

In its initial comments, BSG presented both the benefits that consumers continue to receive from third-party billing for wireline telecommunications services and the continuing downward trend in cramming complaints related to such services. Numerous commenters have confirmed these showings. To protect the significant benefits to consumers, the Commission should not impose onerous additional restrictions, such as an opt-in requirement, on third-party billing for wireline telecommunications services.

Even those commenters arguing in favor of flawed proposals for an opt-in requirement have confirmed BSG’s initial showing that cramming complaints for wireline telecommunications services continue to decline. This continued decline demonstrates that efforts by the Commission and the industry to curb cramming have been successful. There is therefore no need for additional burdensome restrictions on third-party wireline telecommunications services.

The Commission should reject the suggestions of the few commenters that have urged the Commission to place additional hurdles in the path of consumers wishing to take advantage of such services. Notably, these commenters refuse to even acknowledge the important benefits that

¹ *In re Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)*, Notice of Proposed Rulemaking, CG Docket No. 11-116, 78 Fed. Reg. 61,250 (Oct. 3, 2013).

consumers receive or the harm to consumers, in the form of higher prices and less competition, that would result from their proposals. For example, an opt-in requirement would essentially eliminate consumers' ability to rely on collect calling and other third-party services in times of emergency. Other suggestions, such as the proposal to require that consumers dial additional numbers (a PIN or a special * number) before using third-party services, are truly duplicative and unnecessary. For instance, before using a dial-around long-distance service, consumers must already dial special access codes, indicating their explicit decision to "opt in." Requiring consumers to dial even more numbers would serve no benefit, while adding additional burden on consumers. Indeed, imposing such additional restrictions in the face of declining cramming complaints and the tremendous benefits of third-party billed wireline telecommunications services would constitute arbitrary and capricious agency action.

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For the reasons outlined in its initial comments, BSG continues to oppose the imposition of any additional burdensome requirements on consumers who wish to take advantage of the many benefits that third-party billing offers for wireline telecommunications users.¹

I. Numerous Commenters Confirm the Benefits Consumers Receive From Third-Party-Billed Wireline Services.

The Commission has already concluded that legitimate third-party billing provides important “consumer choice and benefits . . . for carriers, third parties, and consumers.”² Not least among these benefits are the lower prices, better service, and increased competition in the wireline long-distance telephone markets.³ As BSG explained, alternative long-distance providers, whether on a subscribed or dial-around basis, offer consumers a host of benefits; benefits made possible by third-party billing. BSG’s initial comments also laid out the important benefits that consumers received from collect and operator service calls, particularly in emergencies.

Not one commenter has offered anything to contradict this showing,⁴ and, in fact, numerous commenters have offered further proof of these benefits. For example, Preferred Long Distance, Inc., observes that third-party billing provides a necessary convenience to its customers, because “a majority of customers . . . demand a single invoice for their telecommunications services.”⁵ Similarly, third-party billing, as 1-800-Collect, Inc. notes, enables “services that many consumers, and especially those with low incomes or without access

¹ See Comments of Billing Concepts, Inc., at 7-9 (filed Nov. 18, 2013).

² Report and Order, 27 F.C.C.R. at 4469, ¶ 90.

³ See *id.* at 4452, ¶ 41 (singling out alternative long-distance service as an important third-party billed service).

⁴ An individual commenter does offer the one-sentence claim that “the actual benefits provided by third-party billers are minimal.” Comments of Andrew Vaden, at 2. Even that commenter acknowledges, however, that “services directly related to the underlying telephone service” ought to be exempted from restrictions he supports. *Id.* And, as BSG has previously explained, BSG, as well as a number of carriers, have ceased third-party billing for non-telecommunications services. In fact, the millions of customers of alternative long-distance and collect/operator assisted calls conclusively show that consumers are taking advantage of the substantial benefits provided by third-party services.

⁵ Comments of Preferred Long Distance, Inc., at 2.

to wireless services, have come to expect to be available.”⁶ Without third-party billing, as the Coalition for a Competitive Telecommunications Market explains, “consumers would essentially be deprived of viable, competitive (*i.e.*, non-LEC) alternatives for 1+ Services.”⁷ The significant consumer benefits of third-party billing must be weighed against the costs of the overly burdensome proposals that a few commenters suggest.⁸

II. Commenters Agree That Wireline Cramming Complaints Continue to Decline.

Not only does third-party billing play a crucial role in enabling consumers to obtain the benefits discussed above, but there continues to be no support in the record for finding that the Commission needs to take drastic action to curb cramming on wireline telecommunications bills. On the contrary, the rates of alleged wireline cramming continue to decline. This marked decline underscores the success of the Commission’s recent actions and the voluntary actions of industry participants. Just as importantly, this marked decline shows why an opt-in proposal is unnecessary.

In our initial comments, we explained that BSG’s own data show that consumer allegations of cramming have reached all-time lows. Now, data from other commenters confirms this decline. The California Public Utilities Commission (“CPUC”) notes that it saw a nearly 50% drop in wireline cramming complaints in 2012, and that the CPUC is anticipating an additional nearly 50% drop in 2013.⁹ The data aggregated by the CPUC from carriers confirm this dramatic decrease, also showing a near 50% decline in wireline cramming complaint rates.¹⁰

⁶ Comments of 1-800-Collect, Inc., at 4.

⁷ Comments of Coalition for a Competitive Telecommunications Market, at 3.

⁸ See FCC, “Statement From FCC’s Chairman Julius Genachowski On The Executive Order On Regulatory Reform And Independent Agencies” (July 11, 2011) (noting the Commission will “incorporate[] cost-benefit analysis into [its] decision-making”).

⁹ See CPUC Comments at 18.

¹⁰ *Id.*

Together, these data demonstrate that the actions of the Commission and the industry are working; further burdensome restrictions on third-party billing are unnecessary.

III. The Commission Should Reject Suggestions To Impose Onerous Burdens on Consumers Who Wish To Use Third-Party Billed Wireline Services.

Despite the significant benefits that third-party billing offers to consumers and the declining rates of cramming complaints, a few commenters suggest the Commission ought to burden consumers with a duplicative opt-in requirement before they can continue using third-party-billed services.¹¹ As BSG explained in its initial comments, many of these proposals would deprive consumers of important services, reduce competition in the industry, or are simply duplicative of existing consumer protections. And all of these proposals would increase consumer confusion. The Commission should reject these proposals.

A. Opt-in Proposals Would Deprive Consumers of Important and Beneficial Services.

A primary flaw with each of the comments suggesting an “opt-in” proposal for all third-party billing is their failure to note that such a proposal would deprive consumers of important and beneficial services. In particular, recipients of collect calls have no way of knowing when a friend or loved one will need to contact them. These consumers, therefore, have no way of knowingly opting-in to such charges. Although BSG has previously raised this issue,¹² and the Commission explicitly requested comment on the problem,¹³ not one commenter supporting an opt-in proposal has addressed the problem, let alone offered a reasonable solution. There is none, and this alone is sufficient reason to reject calls for an opt-in requirement.

¹¹ See Supplemental Comments of the California Public Utilities Commission and the People of the State of California, at 7-14 (hereinafter “CPUC Comments”); Supplemental Comments of the National Association of State Utility Consumer Advocates, at 6 (hereinafter “NASUCA Comments”); Comments of Natalia Renta, at 1-2; Comments of Lindsey Warp, at 2; Comments of Andrew Vaden, at 2.

¹² See Comments of Billing Concepts, Inc., at 3-4 (filed June 23, 2012).

¹³ See Report and Order, at 4486, ¶ 139.

The CPUC's proposals for implementing an opt-in requirement only compound the problem. For instance, a recipient of a collect-call, by definition, cannot use a "dial-around" number prior to receiving the phone call. Similarly, a collect call provider cannot wait to connect a call until the consumer (presumably using a second telephone line) contacts his or her LEC and approves the charge, whether through an "easy to use" phone number or, as NASUCA also suggests, by providing his or her PIN. Providing a PIN directly to a collect-call provider is also not feasible, as collect call providers would have no way to know in advance if the PIN is correct, and querying a LEC database would significantly delay call completion time and increase costs.¹⁴ In short, an opt-in proposal would deprive countless consumers of their ability to receive collect or inmate calls.¹⁵

The opt-in proposals would deprive many other consumers of services as well. For instance, as the CPUC acknowledges, a PIN-based approach contains "potential problems . . . including the burdens of remembering yet another pin."¹⁶ A forgotten PIN, however, is more than just an inconvenience. It means that a consumer trying to place a long-distance call to a loved one or to quickly look up an unknown phone number is unable to do so. If the number of forgotten PINs is even a small fraction of the millions of customers currently using third-party billed services from BSG customers, the result would be a tremendous increase in consumer frustration and harm. The Commission should not deny consumers the ability to access these important services, but an opt-in requirement would do just that.

¹⁴ The same problems would arise with respect to a "Do Not Cram" list that one commenter proposes. *See* Comments of Massachusetts Department of Telecommunications and Cable, at 6-7. It would be technically difficult, if not impossible, for third-party providers to query this database in real time, prior to completing a call. Rather, consumers would likely suffer significant delays in call completions under such a proposal.

¹⁵ *See* Comments of 1-800-Collect, Inc., at 5 ("[T]he situational, 'on demand' nature of collect calling does not lend itself to a one-time, fixed decision to opt in or out of collect calling altogether.").

¹⁶ CPUC Comments at 12.

B. Opt-in Proposals Would Harm Competition in the Wireline Telecommunications Market.

Another critical flaw in most opt-in proposals is that each requires consumers to separately contact the LEC prior to each transaction. For instance, most of the CPUC's proposals would require a consumer to separately contact a LEC (to provide a PIN or at a special phone number) before engaging in a third-party billed transaction.

If the opt-in proposals discussed by some commenters were implemented, consumers could no longer directly place long-distance calls to friends and family, and could no longer directly switch their long-distance provider. Under proposals like the CPUC's, these consumers must first call their LEC and successfully opt-in to third party charges, before they can ever place their phone call with their desired long-distance provider.¹⁷ This burden would simply be too much for many consumers who are accustomed to near instantaneous call connection. Many would refuse to use these otherwise beneficial services, and those that do use them would have to face the lost time and increased frustration accompanying these new procedures, simply to accomplish what they previously been able to do with ease.

In short, whether because of these new burdensome tasks or simply because of the well-documented problem of default bias,¹⁸ consumers would decrease their use of legitimate third-party billed services under an opt-in regime. This result, however, would harm all consumers of third-party billed services, not just those who can no longer access services they previously used. This is because the low rates that alternative long-distance providers offer depend on economies

¹⁷ See CPUC Comments, at 13 (suggesting "carriers . . . create an easy-to-remember-and-to-use number that customers can call or text if they want to permit or block third-party billing, either on a one-off basis or a going-forward basis").

¹⁸ See Comments of Billing Concepts, Inc., at 6 (filed Nov. 23, 2013).

of scale. As alternative long-distance providers' customer bases shrink, so do their economies of scale, and prices must rise as a result.

C. Opt-in Proposals Are Duplicative of Existing Consumer Protections.

In its comments, BSG explained that consumers must already affirmatively opt-in to using third-party billed services through explicit actions on their part.¹⁹ As a result, BSG argued that an opt-in proposal would be entirely duplicative, providing little benefit to consumers. The comments advocating for an opt-in proposal confirm that this is the case.

The CPUC advocates for an opt-in proposal involving “creating a three-digit dial-around, such as the *86 used to dial-around [sic] call blocking.”²⁰ While the CPUC is correct that there would be significant “mechanical and electronic complexities” in implementing such a system, that is not the only problem with this proposal. In fact, it is entirely duplicative of consumers' existing opt-in method for dial-around long distance providers. When a consumer wishes to use a dial-around long-distance provider, he or she must already first dial the provider's unique number (such as a 10-10 number) before placing the long distance call. Requiring that a consumer, before dialing the provider's number, first dial another dial-around number adds nothing to the transaction except burden on the consumer.

A requirement that an alternative long-distance provider obtain a customer's PIN before executing a service change request is similarly duplicative of the Commission's existing slamming regulations.²¹ Those slamming regulations are already designed to prevent unauthorized service changes. The Commission should reject proposals that would burden

¹⁹ See Comments of Billing Concepts, Inc. at 1-4.

²⁰ See CPUC Comment at 13.

²¹ See CPUC Comments at 12-13; NASUCA Comments at 6.

consumers with these duplicative and unhelpful additional requirements merely to access the legitimate telecommunications services they currently enjoy.

D. Opt-in Proposals Would Create Significant Consumer Confusion.

BSG's initial comments explained the significant consumer confusion that would result from the imposition of an opt-in requirement. This confusion is unavoidable, and the lack of any discussion of this problem by commenters supporting an opt-in requirement is telling.

Only one commenter discusses a related problem: how an opt-in program, with its myriad of flaws, could even be phased in. The CPUC discusses three options for beginning the program, but then immediately observes the flaws with each approach. A point-of-sale requirement or phasing the program in over time would result in disparate treatment of customers for months or years to come, "caus[ing] customer confusion due to inconsistencies from the timing differences in implementation." On the other hand, applying an opt-in requirement on a single date certain would "pose operational challenges to carriers . . . because of the sheer volume of notifications that would need to be provided to customers."²² These operational challenges, and the associated costs to both consumers (in lost time and increased frustration) and carriers, provide an additional reason for declining to impose an opt-in requirement.

IV. Conclusion

The Commission should not impose an opt-in requirement for third-party billing of wireline telecommunications services. This conclusion follows naturally from a simple cost-benefit analysis. If the Commission rejects proposals for an opt-in requirement, it will preserve the numerous benefits millions of consumers are continuing to enjoy from third-party billed services. In sharp contrast, the costs of imposing an opt-in requirement are quite high.

²² CPUC Comments at 10-11.

Consumers would be deprived of important services on which they rely, such as collect calls, because these third-party billed charges cannot be anticipated ahead of time. Consumers would also face additional hurdles before being able to contact friends and family by using alternative long-distance providers. And, most importantly, millions of consumers would suffer significant frustration and lost time due to the inevitable confusion that would result from such a fundamental change in the way they obtain basic telecommunications services.

The record in this matter therefore compels the conclusion that an additional opt-in requirement for third-party billed wireline telecommunications services should be rejected.

Respectfully submitted on December 16, 2013.

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