

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
MCI Telecommunications Corporation)	RM 9108
)	
Billing and Collection Services Provided)	
By Local Exchange Carriers for Non-Subscribed)	
Interexchange Services)	
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**EX PARTE COMMENTS OF
THE COALITION TO ENSURE RESPONSIBLE BILLING**

The Coalition to Ensure Responsible Billing (“Coalition”), by undersigned counsel, hereby submits these *ex parte* comments in the above-captioned proceeding to assist in the Commission’s ongoing consideration of whether steps are needed to prevent discrimination by local exchange carriers (“LECs”) in the billing and collection of charges for telecommunications services. The Coalition is a corporation composed of seven billing clearinghouses that are interested in ensuring the integrity, and increasing the clarity, of the local telephone bill.¹

The various billing clearinghouses that are members of the Coalition have established billing and collection contracts with all of the Bell Operating Companies (“BOCs”), GTE, and most independent incumbent LECs. The Coalition members primarily assist smaller competitive companies offering interexchange services, voice mail, paging, and other services by aggregating these companies’ charges under a single contract with each LEC. These billing arrangements are essential to the development of an efficient and competitive telecommunications marketplace, as consumers benefit from the simplicity and accounting convenience of a single bill, and as

¹ The members of the Coalition are Billing Concepts, OAN Services, Federal TransTel, HBS Billing Services, ILD Teleservices, Integretel, and USP&C.

smaller competitive companies are able to reach their customers through the local telephone bill on better terms and at lower cost.

I. Introduction

The value of billing arrangements between clearinghouses and LECs to the telecommunications marketplace is undermined by the incentive and the ability on the part of LECs to afford preferential treatment to their own competitive operations. Specifically, as LECs begin to enter and compete in new markets, the Commission should recognize that they will use (and in many cases, already are using) their exclusive control over local telephone bills to leverage their competitive position in the local market to fortify their position in the market for other telecommunications services. Ensuring nondiscriminatory access to billing and collection through the local telephone bill is therefore necessary to prevent LECs from using their control over the bill in such a discriminatory manner.

As MCI first indicated in its Petition in this docket, the strong-arm “take or leave it” approach taken by certain LECs threatens the contractual billing and collection process; these LECs often claim that consumer protection goals make tough third party contract terms necessary, but this is not the case. True consumer protection requires that all providers – including the LECs – agree to abide by the same rules. In the end, the promise of a competitive market will suffer from the LECs’ unchecked discriminatory conduct, as clearinghouses and competitors cannot meet unreasonable LEC conditions and as consumers ultimately decline to accept service from alternative carriers who are unable to provide a single bill like the LEC. The Commission has the authority to protect against such anticompetitive tactics, and it should respond immediately in the context of the MCI Petition to ensure that LECs that provide billing and collection functions for third party telecommunications services that compete with similar LEC-provided services do so on a nondiscriminatory basis.

II. The LECs Have the Incentive and the Ability to Exercise Virtually Unfettered Control Over Billing and Collection Functions.

As the telecommunications industry moves to a more competitive model, certain risks related to the use of LEC billing and collection services become increasingly apparent. The BOCs are preparing to enter the interexchange markets within and without their service regions. Other LECs such as GTE have already done so nationwide. The BOCs and other LECs are competing already in voice mail, paging, and cellular service markets as well. As all of these LECs expand their operations and compete for the first time outside the local exchange market, an incentive has developed for them to discriminate against their now-competitor service providers. These LECs gain a clear competitive advantage if they can provide a range of telecommunications charges on a single bill while their competitors are forced to provide separate bills.

This newly developed *incentive*, however, is not the only source of the market problems that have prompted MCI's Petition and the more recent request for expedited action in this case. More importantly, LECs continue to possess the *ability* to discriminate against competitors because of their exclusive control of the local telephone bill. Quite simply, the incumbent LECs can largely dictate the terms of access to the bill. The LECs can also make unreasonable demands in the process of establishing billing and collection contracts that make it more difficult for the interexchange carriers and other competitive service providers (and the clearinghouses that serve them) to provide customers with a single bill for all of their telecommunications services. For example, LECs often impose "complaint thresholds." These arbitrary ceilings on the acceptable level of complaints that will be attributed to a clearinghouse are set so low that they are almost impossible to meet, and the LECs typically possess the unilateral power to determine what constitutes a "complaint" under these thresholds. Of significant concern is the fact that a few "bad apple" service providers with very small numbers of complaints could effectively shut down an entire clearinghouse operation under these thresholds and thereby deny other providers the right to gain access to the LEC bill through that clearinghouse. In another demonstration of their power over access to the local telephone bill, LECs foist modified terms

into their existing contracts with clearinghouses, who have little bargaining power to refuse the LECs' onerous revisions.¹

The threat posed by LEC anti-competitive actions is exacerbated by the lack of viable alternative billing arrangements. The Commission has previously suggested that alternatives to LEC billing and collection services are available for telecommunications services.² As a practical matter, however, it is the Coalition's experience over the nearly 13 years since the Commission made that determination that these alternatives are not feasible for billing and collection of telecommunications services. Although the use of credit card bills may once have seemed to offer a promising avenue for billing of services, such a billing mechanism cannot possibly reach all customers. Not all consumers wishing to utilize telecommunications services possess credit cards. In fact, Census Bureau statistics show that as of 1995, approximately one-third of American families *did not* have general purpose credit cards. Significantly, lower income consumers were less likely than other Americans to possess a credit card: only 26% of families earning under \$10,000 had credit cards, and only 53% of families earning between \$10,000 and \$24,999 used general purpose credit cards.³ Moreover, even for those consumers who do hold credit cards, the market dynamic of customers switching balances from one card to another would make following each customer a costly and complex process. In addition, credit card billing currently does not provide for the necessary itemization of calls. Thus, credit cards lack the ubiquity, reliability, and level of detail of the LEC-provided telephone bill, and lower-income consumers would be particularly difficult to reach without using the LEC bill.

Direct billing – another alternative that may have offered hope in 1986 – has turned out to be economically infeasible in most cases and competitively problematic in almost every instance.

¹ See also footnote 13, *infra*, for a further discussion of LEC abuse of market power in the context of billing and collection contracts.

² *Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150 (1986) (“*Detariffing Order*”), at ¶ 37.

³ U.S. Census Bureau, *Statistical Abstract of the United States* (Oct. 13, 1998), at 524.

Smaller competitive carriers cannot afford to undertake direct billing efforts themselves (and therefore, they contract with the clearinghouses and ultimately the LECs to bill for them). Carriers that provide non-subscribed services need to bill only for small and intermittent charges, thereby making the direct processing of bills cost-prohibitive. Most significantly, consumers clearly prefer to see all of their telecommunications charges on a single bill. To the extent that one provider can offer this single bill while another cannot, the first provider enjoys a sizeable competitive advantage over the latter. Accordingly, contracting for LEC billing and collection remains the only viable alternative for many telecommunications providers.

Although the MCI Petition has been styled as addressing billing for non-subscribed interexchange services, the LEC incentive and ability to discriminate can be identified in the billing and collection for presubscribed interexchange services and other telecommunications services as well. Many start-up carriers offering competitive telecommunications services, such as voice mail, caller ID, paging, and wireless services, among others, are too small to invest the significant capital associated with developing a billing and collection system and the recurring costs associated with bill production and collection activities. Moreover, if a telecommunications provider has a substantial number of presubscribed customers who on average make only low to moderate use of its services, that provider would be forced to incur the loss of direct billing such low revenue customers. Alternatively, the provider might be forced to impose a surcharge on customers just to cover billing costs. Relying upon direct billing would therefore harm competitive development in the telecommunications marketplace and generate inefficient costs that would need to be recovered from the consumer. Thus, the lack of alternatives for billing of presubscribed telecommunications customers is just as troubling as it is in the non-subscribed interexchange service billing context.

The Coalition is therefore concerned that LECs could use their exclusive control of billing and collection functions for both presubscribed and non-subscribed services to harm their competitors. Specifically, LECs could jeopardize the competitive position of new market entrants by favoring their own services over those of competitors when making demands of

competitors or enforcing conditions for appearing on their telephone bills. As discussed above, under the guise of protecting consumers from cramming, a LEC could discontinue billing for a provider that reached a certain consumer complaint threshold, even as the LEC may not discontinue billing for its own services notwithstanding the number of complaints received.⁴

Despite such competitive threats, it remains unclear whether this Commission will entertain complaints alleging discrimination in the provision of billing and collection services. The Coalition is heartened to hear USTA Vice President Sarjeant appears to have recognized that the Commission may have jurisdiction to ensure non-discriminatory treatment.⁵ Further, Common Carrier Bureau Chief Larry Strickling also has assured the competitive industry that the Commission is receptive to resolving complaints.⁶

These assurances, however, have not included clear articulations of the Commission's authority or the rules and procedures under which those aggrieved by LEC discrimination in the

⁴ Although the incumbent LECs have expressed general support for the principle of non-discriminatory treatment, as the MCI Petition and comments filed in this docket demonstrate, they have failed to make that commitment concrete or enforceable. Larry Sarjeant, Vice President of legal and regulatory affairs for the United States Telephone Association ("USTA"), testified before Congress that the LEC anti-cramming guidelines "in several places, specify that the LECs should treat themselves . . . no differently than third-parties for whom they bill." Hearing on Protecting Consumers Against Cramming and Spamming Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the House Commerce Committee (Sept. 28, 1998), Federal News Service transcript at 29. A review of the LEC guidelines, however, reveals little more than a general statement that "[i]f a LEC chooses to implement a particular best practice, it is expected that such practice will be implemented in an objective, fair, and equitable manner." Anti-Cramming Best Practices Guidelines at 3. While encouraging, this rhetorical statement hardly ensures non-discriminatory treatment for competitive service providers at the hands of LECs.

⁵ Mr. Sarjeant noted: "I would expect the FCC to the extent that a carrier was discriminating in that regard would be interested in knowing about it and whether or not they would have jurisdiction under Title I or Title II, I'm sure they would have great interest and we . . . or our carrier would probably be in there talking with them." Hearing on Protecting Consumers Against Cramming and Spamming Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the House Commerce Committee (Sept. 28, 1998), Federal News Service transcript at 29.

⁶ Common Carrier Bureau Chief Larry Strickling stated that there is a "process under the Telecom Act to adjudicate complaints brought against carriers for unreasonable activities on their part. So, if one of these competing providers felt that the denial of billing or the shut-off of billing constituted an unfair practice, in that regard, they could bring a complaint case before us and we would adjudicate the case." *Id.*

provision of billing and collection services would bring their claims. Accordingly, to give more certainty in enforcing a nondiscrimination principle, the Commission should use the MCI Petition as a vehicle to advance a clear and unmistakable ruling that it is unlawful for any incumbent LEC to discriminate in the provision of billing and collection services. The Commission should also expressly reaffirm Mr. Strickling's indication that it will entertain complaints regarding discrimination in the provision of billing and collection services, and it should enforce this nondiscrimination obligation pursuant to such complaints. In doing so, the Commission can deter LECs from discriminating in the provision of billing and collection services going forward, and minimize the LECs' ability to distract from complainants' concerns on procedural grounds.

III. The Commission Has the Authority to Address Discrimination in the Provision of Access to Billing and Collection Functions.

Although the Commission determined in 1986 that it did not have authority to regulate billing and collection services pursuant to Title II of the Communications Act of 1934 ("1934 Act"), it expressly retained ancillary jurisdiction under Title I to act where necessary in the context of billing and collection. It declined, however, to exercise its Title I authority in the context of that 1986 order.⁷ Because the competitive developments the Commission was hoping for in declining to exercise this authority have not come to fruition, the Coalition believes that the Commission should re-evaluate this aspect of its decision. Acting now to address discrimination in the provision of billing and collection functions to telecommunications providers would represent only a limited and proper exercise of the Commission's Title I power, and would not lead in any manner to a broader regulation of billing and collection services. The Coalition also believes that in light of recent pronouncements in its "Truth-in-Billing" proceeding, the Commission has additional authority to govern the content of customer bills pursuant to section 201(b) of the 1934 Act.

⁷ *Detariffing Order*, at ¶¶ 35-37.

A. Ancillary Jurisdiction Pursuant to Title I

In assessing its powers under Title I, the Commission has noted that an exercise of ancillary jurisdiction would be appropriate only where this exercise would “be directed at protecting or promoting a statutory purpose.”⁸ There are in fact two critical statutory purposes that would be achieved by invoking Title I to ensure that incumbent LECs may not discriminate in billing and collections for telecommunications services. First, the Commission is under a statutory obligation to *promote the availability of widespread communications services* for all Americans.⁹ If competitive providers are guaranteed that they will be able to bill and collect for the services they provide on a nondiscriminatory basis through the local telephone bill, these providers will be more likely to extend their services to new consumers. Thus, prohibiting discrimination in the provision of billing and collection services will promote the widespread proliferation of telecommunications services consistent with the Commission’s statutory duty.

In addition, the Commission may invoke its ancillary jurisdiction to *promote the development of competition* consistent with the Telecommunications Act of 1996 (“1996 Act”). Specifically, Congress has stated that the 1996 Act was intended to provide “a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening *all* telecommunications markets to competition.”¹⁰ Yet as discussed above, because LECs possess exclusive control over the local telephone bill, they have the ability to discriminate against competitive service providers in the market for telecommunications services. Preventing LECs from discriminating against competitive service providers with

⁸ *Id.* at ¶ 37.

⁹ See 47 U.S.C. § 151 (stating that the purpose of the 1934 Act is to make available “to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”).

¹⁰ H.R. Conf. Rep. No. 104-458, at 1 (1996) (Conference Report on the Telecommunications Act of 1996) (emphasis added).

respect to billing and collection services is therefore essential in fostering the development of competition in the telecommunications marketplace, particularly for smaller competitive service providers.

B. Addressing the Content of Bills Pursuant to Section 201(b)

The Commission has further stated in its recent Notice of Proposed Rulemaking (“NPRM”) in CC Docket No. 98-170 that a LEC telephone bill is an integral part of the relationship between a LEC and the customer, and that regulation of information on bills falls accordingly within the Commission’s authority under section 201(b) of the 1934 Act.¹¹ Like the “cramming” concerns discussed in that NPRM, an incumbent LEC’s provision of billing and collection services to third parties also affects the content of a bill and the LEC’s relationship with the customer (as well as the competitive service provider’s relationship with that customer). A LEC’s practices governing billing and collection services – and the differences between how it treats its customers and its competitors’ customers – will certainly affect what appears on customers’ bills.¹² The Coalition therefore submits that under the reasoning employed in the most recent NPRM, the Commission has the authority to impose a nondiscrimination requirement pursuant to section 201(b) of the 1934 Act as well.

IV. Conclusion

Competition in the market for billing and collection services has not developed as the Commission had hoped in 1986. Instead, LECs continue to possess control over the only efficient and effective means for telecommunications service providers to bill and collect from their customers. Because of this central position occupied by the LECs, they have the *ability* to dictate the terms of access to the local telephone bill. Moreover, as the LECs begin to compete against providers in the interexchange market and other markets such as voice mail and paging, the incumbents have the *incentive* to discriminate against these new competitors. In order to

¹¹ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Notice of Proposed Rulemaking (rel. Sept. 17, 1998).

¹² As comments filed previously in this docket reveal, incumbent LECs have used their exclusive control over the local telephone bill to: (i) require clearinghouses to cede control over customer service responsibilities; (ii) incorporate an “excessive complaint surcharge” on clearinghouses and service providers; and (iii) regulate the use of promotional material. *See* Joint Comments of OAN Services, Inc. and Integretel, Incorporated, filed July 25, 1997, at 6-7; Comments of Hold Billing Services, Ltd., filed July 25, 1997, at 5-7.

stimulate competition in the telecommunications market, the Commission should promulgate a rule to prevent LECs from discriminating in favor of their own services *vis-a-vis* competitive services with regard to billing and collection functions.

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Dated: January 21, 1999

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EXECUTIVE SUMMARY

The Coalition to Ensure Responsible Billing (“Coalition”) provides these *ex parte* comments to demonstrate to the Commission how continuing discrimination by local exchange carriers (“LECs”) impairs other telecommunications service providers’ ability to provide their customers with timely and accurate bills for services rendered. As incumbent LECs take steps now to enter new markets beyond their traditional local exchange market, they are developing the incentive to discriminate against other telecommunications service providers in these new markets. The LECs’ ability to control the terms for access to billing and collection functions further provides them with the ability to act upon this incentive. Specifically, as the LECs enter the markets for interexchange services, paging services, and cellular services, they are able to leverage their position in these markets by effectively denying their competitors access to the local telephone bill. In the end, the promise of a competitive market will suffer from the LECs’ unchecked discriminatory conduct, as billing clearinghouses and competitors cannot readily provide the single bill desired by consumers, and consumers’ choices are in turn artificially limited.

The Commission possesses the authority to address this ongoing discrimination. Although the Commission may have determined that it could not regulate billing and collection services under Title II in 1986, it left open the possibility that it could exercise ancillary jurisdiction over such services pursuant to Title I. Because the competitive developments that the Commission was hoping for in declining to exercise its Title I authority have not come to fruition over the past thirteen years, it should consider a limited exercise of this authority now to ensure that LECs cannot discriminate in providing access to billing and collection functions. Moreover, because the LECs’ discrimination affects the content of customer bills and the relationship between service providers and their customers, the Commission should also consider exercising its authority under section 201(b) of the Communications Act of 1934 to halt LECs from discriminating in a manner that limits the ability of other service providers to reach their

customers for billing and collection purposes. A rule prohibiting LECs from discriminating in favor of their own services *vis-a-vis* competitive services with respect to billing and collection functions is therefore warranted.