

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Protecting Consumers From)
Unauthorized Carrier Changes and) CG Docket No. 17-169
Related Unauthorized Charges)

**Reply Comments
of**

**Consumers Union
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
National Consumer Law Center, on behalf of their low-income clients
The National Consumers League
Public Citizen
Public Knowledge**

October 13, 2017

Consumers Union, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center on behalf of their low-income clients, The National Consumers League, Public Citizen, and Public Knowledge, respectfully encourage the Federal Communications Commission (FCC or Commission) to use the opportunity presented by this rulemaking to implement the comprehensive consumer protections against unauthorized carrier changes and charges—known as “slamming” and “cramming,” respectively—outlined in our previous submission.¹ For too long, consumers have been subjected to these fraudulent practices, costing them hundreds of millions of dollars over the years.² In this letter, we reiterate several points made in our original comments, and respond to several of the comments submitted to the proceeding.

Enhanced cramming and slamming protections should apply to all voice customers.

We again emphasize that cramming and slamming rules should be strengthened and extended to all voice customers, including traditional landline, Voice over IP (VoIP), and mobile, both pre- and post-paid. We disagree with the commenters who recommend that the FCC decline to extend additional slamming and cramming protections to VoIP and mobile users because these services do not currently allow separate long-distance calling plans.³ First, this may not always be the case. And moreover, as the FCC points out in the Notice of Proposed Rulemaking (NPRM), some unscrupulous carriers may “bill for services never rendered.”⁴ It’s important that all consumers are appropriately protected from these fraudulent activities. Leaving significant gaps in protections—especially as more consumers adopt mobile and VoIP phones—would only incentivize crammers and slammers to find new ways to target these customers.

Similarly, at least one commenter argues that the proposed slamming and cramming rules should not apply to voice providers that have already blocked certain third-party charges from consumer bills.⁵ We disagree. Voluntary practices are not sufficient to protect consumers. Consumers should have guaranteed protections against cramming and slamming should their voice provider mistakenly allow or choose to accept this type of billing.

¹ See Comments of Consumers Union et al., CG Docket No. 17-169 (Sept. 13, 2017), *available at* <http://consumersunion.org/wp-content/uploads/2017/09/Unauthorized-carrier-changes-and-charges-comments-final.pdf>.

² COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, CRAMMING ON MOBILE PHONE BILLS: A REPORT ON WIRELESS BILLING PRACTICES, STAFF REPORT FOR CHAIRMAN ROCKEFELLER at 19 (July 30, 2014), *available at* https://www.commerce.senate.gov/public/_cache/files/1690f9da-2040-455a-8801-3f1969b796f2/BBBB4B24F8FB5B29619A25536E5A135C.cramming-report-final.pdf [hereinafter Rockefeller Staff Report].

³ For example, CTIA comments that “In CMRS, without separate local and long distance service, there is no opportunity for slamming.” Comments of CTIA, CG Docket No. 17-169 at 3 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/109132980613613/170913%20CTIA%20Slamming%20and%20Cramming%20NPRM%20Comments%20FINAL.pdf>; Comments of The US Telecom Association, CG Docket No. 17-169 at 5 (Sept. 13, 2017), *available at* https://ecfsapi.fcc.gov/file/1091388038492/USTA_Slamming_Cramming_Comments_09.13.17_If.krs.pdf.

⁴ *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking and Order, CG Docket No. 17-169 at ¶ 1 (July 13, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-91A1.pdf [hereinafter NPRM].

⁵ Comments of Verizon, CG Docket No. 17-169 at 8-9 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10913347026666/2017%2009%2013%20Verizon%20Slamming%20and%20Cramming%20Comments.pdf>.

Consumers continue to experience harm from costly cramming and slamming practices.

Several commenters cast doubt on the extent of the slamming problem, arguing that the number of complaints filed at the FCC is statistically insignificant in comparison to the number of legitimate carrier changes that are processed annually, even if complaint data significantly underestimates the problem.⁶ At least one commenter describes the complaints and enforcement actions cited in the NPRM as merely allegations and not confirmed evidence of misbehavior on the part of the carriers.⁷

Regarding this point, it is worth emphasizing again, as the FCC notes in the NPRM, that it is difficult to detect the full extent of the cramming and slamming problems. Complaint data illuminates only a small fraction of the problems, in part because “[m]any consumers who fall victim to slamming and cramming may not file a complaint because they do not detect the violations.”⁸ Cramming and slamming are persistent problems precisely because they are so difficult to detect. Many consumers do not carefully read their phone bills, and as more consumers switch to automatic billing, it’s likely that an even smaller percentage of customers will carefully review their bills each month.⁹ One study revealed that only 5% of the victims of one crammer were aware of the fraudulent charges.¹⁰

Change to Win has supplemented the FCC’s complaint data with additional data that provides a more complete picture of these problems. Complaint data collected by the Federal Trade Commission (FTC) and obtained from a Freedom of Information Act request showed that 20% of the complaints about the four largest wireless carriers from 2013 to 2016 were about “unauthorized charges,”¹¹ and that the number of cramming complaints had increased over that time period. Change to Win also cites an online poll and interviews with current and former T-Mobile workers to illustrate the pressure that they were under to add charges and services to the consumers’ bills that they did not request—clearly outlining the incentives for cramming and slamming that exist in the industry.¹²

A number of commenters complained about the costs of implementing the proposed cramming and slamming protections, especially in comparison to their view of potential benefits

⁶ See Comments of CALTEL, CG Docket No. 17-169 at 3-4 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10913417825572/CALTEL%20Comments%20%20CG%2017-169%20%209-13-17.pdf>.

⁷ Comments of Telpex, CG Docket No. 17-169 at 3-7 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/1091359376209/Preferred%20FCC%20Comment%209-13-17.pdf>.

⁸ NPRM, *supra* note 4 at ¶ 5 fn. 14.

⁹ Comments of Change to Win, CG Docket No. 17-169 at 4-5 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10913770313127/CTW%20Notice%20and%20Comment%20on%20Cramming%20Final.pdf>; Reply comments of the Federal Trade Commission, CG Docket No. 11-116 at 6-7 (July 20, 2012), *available at* https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-reply-comment-federal-communications-commission-concerning-placement-unauthorized-charges/120723crammingcomment.pdf.

¹⁰ FED. TRADE COMM’N, MOBILE CRAMMING: AN FTC STAFF REPORT at 17 (July 2014), *available at* <https://www.ftc.gov/system/files/documents/reports/mobile-cramming-federal-trade-commission-staff-report-july-2014/140728mobilecramming.pdf> [hereinafter FTC Report].

¹¹ Comments of Change to Win, *supra* note 9, at 6-7.

¹² *Id.* at 9-10.

to consumers.¹³ However, failure to adopt appropriate protections against these fraudulent activities simply pushes the costs onto consumers. The phone companies have profited handsomely from third-party charges. According to an industry representative, before the top wireless companies vowed to phase out premium SMS in 2013, third-party mobile charges alone were a \$2-3 billion a year industry.¹⁴ The carriers typically collected 30-40% of these charges.¹⁵ It shouldn't be left to consumers to have to detect illegal charges that have already been placed on their bills, and then to have to work to obtain a refund. Enhancing restrictions on cramming and slamming will help ensure that these practices are stamped out before they hurt consumers.

The proposed “default freeze” on carrier switches should protect consumers from slamming without infringing on the competitiveness of the long-distance market.

We agree that consumers should enjoy a competitive market for long-distance services, with the opportunity to choose to switch long distance carriers.¹⁶ As long as the Commission ensures that consumers may lift and reapply a freeze easily and at no charge, the proposed default freeze on carrier switches will provide appropriate protections against slamming without interfering with a consumer's ability to change carriers should they decide to do so. One commenter pointed out that few consumers have signed up for a freeze, to support its view that the default freeze is unnecessary.¹⁷ On the contrary, this suggests that consumers may not be aware of the option. Clearly, the optional freeze provided by many carriers is not enough to protect consumers against slamming.

Standards for third-party verification of requests for carrier switches should be strengthened, not weakened.

Several commenters assert that the FCC should abandon or loosen its requirement for third-party verification (TPV) of verbal carrier change requests.¹⁸ It is true that, as the Commission points out, the TPV requirement has not adequately protected consumers from slamming.¹⁹ Nevertheless, as long as verbal over-the-phone requests for carrier changes are permitted, voice providers should continue to be required to use third party verifications (TPVs). Indeed, the TPV should be improved, including by requiring the sales calls to be recorded, and records should be maintained for two years, just as TPVs are required to be retained for that length of time.²⁰ Standards for verifying consumer's carrier change requests should not be weakened in any way.

¹³ See, for example, Comments of Verizon, *supra* note 5, at 2-3; Comments of Comcast, CG Docket No. 17-169 at 2 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10913204877823/Comcast%20Slamming-Cramming%20Comments%20filed%20091317.pdf>.

¹⁴ FTC Report, *supra* note 10, at 4.

¹⁵ Rockefeller Staff Report, *supra* note 2, at 19.

¹⁶ Comments of CALTEL, *supra* note 6, at 2; Comments of the Coalition for a Competitive Telecommunications Market, CG Docket No. 17-169 at 2 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10913302957781/01093138.PDF>.

¹⁷ Comments of CALTEL, *supra* note 6, at 4.

¹⁸ See, for example, Comments of Verizon, *supra* note 5, at 14; Comments of The USTelecom Association, *supra* note 3, at 4.

¹⁹ NPRM, *supra* note 4, at ¶ 6.

²⁰ *Id.* at ¶ 31.

Cramming and misrepresentation on sales calls should be explicitly prohibited.

We agree with the Commission's proposal to codify bans on cramming and misrepresentations in sales calls. Moreover, the Commission should not relax the standard for compliance or the consequences of failure to comply. Several commenters ask that companies not be held responsible for unintentional misrepresentations made by sales agents.²¹ At least one commenter requests that the FCC clarify that its "enforcement efforts will focus on carriers who engage in patterns or practices of misrepresentation and deception."²² However, this sets too low a bar for carrier compliance and creates incentives for them to tolerate a certain level of unauthorized charges or take a passive approach to overseeing their agents. Although the FCC is always free to use its discretion in determining whether to pursue enforcement, the standard for compliance must be strong, and must make clear that carriers are accountable for any cramming and misrepresentations that occur in their companies.

Conclusion

We appreciate the FCC's work to protect consumers from unauthorized carrier charges and switches, and from the deceptive telemarketing that is so often a vector for this fraud. As consumers increasingly face scam calls that separate them from their hard-earned money and undermine their privacy, we respectfully urge the Commission to implement effective changes to end this scourge for good.

Respectfully submitted,



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²¹ Comments of NCTA - The Internet and Television Association, CG Docket No. 17-169 at 6-7 (Sept. 13, 2017), available at <https://ecfsapi.fcc.gov/file/10913082920850/091317%2017-169%20Slamming%20NPRM.pdf>; Comments of The USTelecom Association, *supra* note 3, at 3-4.

²² Comments of Verizon, *supra* note 5, at 11.

Descriptions of the Organizations Joining this Filing

Consumers Union is the public policy and mobilization division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product testing organization. Using its more than 60 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and telecommunications. www.consumer-action.org

The Consumer Federation of America is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

The National Association of Consumer Advocates (NACA) is a nonprofit association of consumer advocates and attorney members who have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes Access to Utility Service (5th edition, 2011) as well as NCLC's Guide to the Rights of Utility Consumers and Guide to Surviving Debt.

The National Consumers League, founded in 1899, is America's pioneer consumer organization. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit www.nclnet.org.

Public Citizen is a national nonprofit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

Public Knowledge is a nonprofit policy and public interest organization that promotes competition and consumer protection on technology, telecommunications, and intellectual property issues.