

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENT OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) hereby submits this Reply Comment in response to the Federal Communication Commission's (FCC or Commission) Notice of Proposed Rulemaking (*NPRM*) released July 14, 2017, in the above-captioned proceeding. The *NPRM* focuses on instances where a carrier improperly switches a customer's service without the customer's consent (slamming) or imposes unsolicited and improper charges on the customer's telephone bill (cramming). The Commission proposes rules to protect consumers from slamming and cramming and seeks comment on its proposals. In summary, the Commission has proposed the following rules regarding slamming and cramming: (1) ban misrepresentations on sales calls and invalidate any subsequent verification of a carrier change resulting from such misrepresentations; (2) prohibit cramming; (3) make primary interexchange carrier (PIC) freezes the default; (4) possibly block certain third-party billing by default; (5) possibly require executing carriers to double-check a service provider switch with the consumer; (6) and possibly require submitting carriers that rely on third-party verification (TPV) to record the entire sales call that precedes a carrier switch.

The Pa. PUC appreciates the opportunity to file this Reply Comment. As an initial matter, the Pa. PUC's Reply Comment should not be construed as binding on the Pa. PUC in any

proceeding before the Pa. PUC. The proposals contained in this Reply Comment may change in response to subsequent events. This includes developments at the federal or state level, including the filing of ex parte pleadings.

Discussion

The Pa. PUC supports the Commission's efforts to deter incidents of slamming and cramming going forward. The Pa. PUC continues to review customer complaints involving instances of alleged cramming and slamming. In one complaint, the Pa. PUC discovered that an alleged instance of cramming could have affected more than 1,500 customers. Refunds were issued, and the matter has been referred to our Bureau of Investigation and Enforcement to take any further action that may be warranted. Accordingly, the Pa. PUC agrees that the Commission's proposals to strengthen its anti-cramming and slamming rules should act as a deterrent to future acts.

Moreover, as the FCC itself noted in issuing the NPRM, existing procedures have not deterred carriers from slamming and cramming, and a major source of slamming takes the form of deception in sales calls. The FCC noted that since 2010, its Enforcement Bureau has brought multiple actions against carriers for slamming and cramming violations, resulting in over \$80 million dollars in fines and proposed forfeitures.¹

Many commentators contend that the cramming rules should not be applicable to all voice service providers, but instead should remain on wireline providers only. These parties assert, for example, that without substantive evidence of any problem, the FCC should continue to refrain from applying such rules to interconnected VoIP providers; that competition protects

¹ NPRM at 3-4 17,

consumers more effectively than regulation; that current protections are incredibly effective and the FCC would be better served by vigilantly enforcing its existing safeguards; and that slamming and cramming is essentially a fraudulent activity targeted at wireline consumers.² Sprint asserts that the FCC should instead only encourage the voluntary adoption of and compliance with “best practices” as a means of preventing the inclusion of unauthorized third-party charges on wireless bills.³

However, the regulatory experience, including the experience of the Federal Trade Commission (FTC), would seem to bely these assertions, especially with respect to cramming. For example, the FTC states that mobile cramming is on the uptick.⁴ The FTC notes that placing third-party charges on mobile phone accounts as a means of allowing customers to charge payments for third-party goods and services, while useful, has also led to fraud and is becoming an increasing and significant concern particularly with respect to mobile cramming.⁵

The Pa. PUC agrees with NTCA, WTA and National Association of State Utility Consumer Advocates (NASUCA) that the cramming prohibition should be codified and extended to all providers of voice communications, regardless of technology, including wireless (both post-paid and pre-paid) and interconnected VoIP. As NASUCA stated, there is “no legitimate reason for any provider to object, particularly when such platform neutrality would

² See Voice on the Net Coalition Comments at 2-3; Sprint Communications Comments at 6; CTIA Comments at 5-6; USTelecom Association Comments at 5; AT&T Services, Inc. Comments at 2-6, 11-12; Verizon Comments at 6-7 [alternatively, you can individually footnote every example and source each specific comment to its commenter].

³ Sprint Comments at 7.

⁴ See generally FTC July 2014 Staff Report on Mobile Cramming (FTC Staff Report).

⁵ FTC Staff Report at 1-2, 7-8.

also create a ‘level playing field’ for compliance among all providers of voice communications. Simply enough, if a provider does not bill unauthorized charges, it has nothing to fear.”⁶

Because consumers continue to shift their service to wireless and VoIP technologies, it makes no sense for the FCC to continue to exempt those providers from any cramming consumer protections adopted in this proceeding. The Pa. PUC agrees with NASUCA that the Commission is best served not to engage in piecemeal regulation. Rather, the Commission should adopt a comprehensive, forward-looking, technology-neutral regulatory approach and apply those same protections to wireless and VoIP consumers.

Many commenters also assert that slamming does not occur in the wireless or VoIP context because of how those providers’ services are provided or how their networks function. To the extent slamming can occur in the wireless or VoIP context, the Pa. PUC submits that the slamming prohibition also should be codified and extended to all providers of voice communications, regardless of technology. As with cramming, such an approach would create a level playing field for all voice service providers and would help ensure that consumers are protected, regardless of the technology used to provide the service.

Nevertheless, in adopting rules regarding slamming and cramming, the Pa. PUC agrees with NASUCA that the Commission should make clear that its rules do not preempt state efforts to address slamming and cramming under independent state law. Furthermore, the Commission also should clarify the states’ role going forward when addressing consumer or competitor concerns that may arise under any Commission slamming or cramming rules or policies.⁷

⁶ NASUCA Comments at 2.

⁷ The Pa. PUC has a pending reconsideration petition in the ongoing Lifeline Broadband proceeding at WC Docket No. 11-42 *et al*, raising a similar concern about the states’ role in enforcement. The Pa. PUC urges the FCC to act on the issue in that reconsideration and this proceeding in a consistent fashion as well.

The Pa. PUC appreciates the opportunity to submit these reply comments and asks that the Commission give them due consideration.

Respectfully submitted,
Pennsylvania Public Utility Commission

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