

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

REPLY COMMENTS OF CTIA

CTIA submits these reply comments in response to the record in the above-captioned proceeding regarding unauthorized carrier changes and related unauthorized charges.¹

I. INTRODUCTION

CTIA appreciates the Commission's focus on protecting consumers from fraud in the form of slam-and-cram schemes. The record shows that in the CMRS context, slamming does not exist and cramming has all but disappeared.

As a general policy matter, the Commission should only adopt new rules where there is demonstrated harm or market failure requiring regulatory intervention, and the Commission should narrowly tailor any such rules to address the problem at hand.² Because the record

¹ *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges Notice of Proposed Rulemaking*, 32 FCC Rcd 6022 (2017) ("NPRM").

² See, e.g., Statement of Ajit Pai Before the United States House of Representatives Committee on the Judiciary, Washington, D.C. (Mar. 25, 2015), <https://judiciary.house.gov/wp-content/uploads/2016/02/Pai-Testimony.pdf> (rules should be adopted only when there is evidence of an existing problem and any necessary regulatory solution should be narrowly tailored to correct the problem); see also Statement of Michael O'Rielly Before the International Institute of Communications' International Regulators Forum, Brussels, Belgium (Oct. 10, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1010/DOC-347143A1.pdf ("[R]egulations can only be imposed when (1) there is verifiable and specific evidence that there is market failure, (2) data shows that there is actual harm to consumers that

demonstrates that there is no such harm or failure here with respect to CMRS, either for slamming or for cramming, any new rules adopted in this proceeding should not extend to CMRS.

II. THE RECORD DOES NOT PROVIDE EVIDENCE OF A PROBLEM TO SUPPORT THE ADOPTION OF NEW RULES FOR CMRS.

A. The Mechanics of Wireless Service Ensure that Wireless Consumers Are Not At Risk of Slamming.

Slamming has never been a wireless issue. As CTIA and other commenters explained in initial comments, wireless providers offer “all distance” voice service to their customers, virtually eliminating the opportunity for slamming.³ Indeed, it is exceptionally difficult, if not outright technically impossible, to slam wireless customers, as mobile consumers often need a new mobile device or SIM card before they can receive service from a different provider.⁴ Moreover, wireless customers benefit from the anti-fraud protections of the Wireless Local

the regulatory body can resolve, (3) the solution can be carefully tailored and apply only to the relevant set of providers or services, and (4) the benefit of regulation outweighs the associated burdens.”).

³ Comments of CTIA, CG Docket No. 17-169, at 2 (filed Sept. 13, 2017) (“CTIA Comments”); *see also, e.g.*, Comments of AT&T Services, Inc., CG Docket No. 17-169, at 2 (filed Sept. 13, 2017) (“AT&T Comments”) (“wireless and VoIP providers do not even offer consumers the option of purchasing stand-alone long-distance service”); Comments of Sprint Corp., CG Docket No. 17-169, at 2-3 (filed Sept. 13, 2017) (“Sprint Comments”) (“Slamming can only occur when there is a choice of carriers to which a call can be routed from the originating point,” but in wireless, “the wireless carrier is the preferred service provider for all calls, and does not and cannot change the consumer’s default service provider.”); Comments of Verizon, CG Docket No. 17-169, at 8-9 (filed Sept. 13, 2017) (“Verizon Comments”) (CMRS providers “do not offer separate long-distance services, which means that slamming is not a problem”).

⁴ *See* Sprint Comments at 3 (“Moreover, a consumer must take affirmative steps to establish wireless service, including obtaining a mobile device compatible with the wireless provider’s network.”); Verizon Comments at 9 (“[T]he provisioning processes for CMRS ... protect consumers from slamming. CMRS service requires a mobile device and a SIM card....”).

Number Portability Process, under which a carrier submits a customer's provider change request to the old provider only after validating the request.⁵ In sum, the mechanics of the wireless marketplace ensure that slamming and associated cramming schemes are not, nor could be, a wireless problem – a fact the record makes abundantly clear.⁶ The record also establishes that, for many of the same reasons, slamming and associated cramming schemes are not and cannot be an interconnected VoIP problem.⁷

Nevertheless, some commenters ask the Commission to extend slamming protections to all voice customers, including wireless subscribers, without even asserting that slamming is or could be present in wireless services.⁸ For example, Consumers Union *et al.*'s justification for imposing new rules on wireless service simply is that “the strongest possible protections” should apply.⁹ NTCA-The Rural Broadband Association asserts, without identifying an actual problem in the wireless space, that the Commission should impose a new slamming deception rule “regardless of technology or business model.”¹⁰ But the Commission should not impose new rules on CMRS and other services like VoIP that are intended to address a problem that simply

⁵ See CTIA Comments at 3-4.

⁶ See, e.g., AT&T Comments at 11; Sprint Comments at 2-3; Verizon Comments at 8-9.

⁷ See, e.g., AT&T Comments at 11; Comments of Comcast Corporation, CG Docket No. 17-169, at 5-6 (filed Sept. 13, 2017) (“Comcast Comments”) (slamming not a VoIP concern); Sprint Comments at 3 (same). Comments of USTelecom Association, CG Docket No. 17-169, at 5 (filed Sept. 13, 2017) (same); Verizon Comments at 8-9 (same).

⁸ See, e.g., Comments of Consumers Union *et al.*, CG Docket No. 17-169, at 1-2 (filed Sept. 13, 2017) (“Consumers Union *et al.* Comments”).

⁹ *Id.*

¹⁰ Comments of NTCA-The Rural Broadband Association, CG Docket No. 17-169, at 3 (filed Sept. 13, 2017)

does not exist for those services.¹¹ Indeed, Chairman Pai has recognized that cost-benefit analysis must be meaningfully undertaken to prevent the ‘public interest standard [from] becom[ing] a free pass to adopt rules.’”¹² Because there is no evidence of a slamming problem in wireless – and no evidence that the Commission lacks existing tools to address concerns that may arise¹³ – the Commission should not impose slamming rules on CMRS.

B. As Wireless Providers Have Taken Many Steps to Protect Consumers, the Record Does Not Provide New Evidence of Mobile Cramming to Justify a New Rule.

Nor is there an ongoing wireless cramming problem that justifies new cramming obligations on wireless carriers. As CTIA and others explained, previous concerns about cramming have all but been eliminated in recent years as the nationwide carriers phased out the vast majority of Premium SMS (“PSMS”) billing, with exceptions for charitable and political

¹¹ Consumers Union *et al.* observe that “the vast majority of slamming complaints to the FCC since October 2014 relate to wireline service,” but then suggest “several complaints have been filed regarding wireless and VoIP service as well.” Consumers Union *et al.* Comments at 3. Consumers Union *et al.* ignore that these “several complaints” may not actually articulate fraud or legal violation, let alone slamming. See Comments of Telplex, CG Docket No. 17-169, at 3 (filed Sept. 13, 2017) (one cannot logically infer from the number of complaints categorized as slamming and cramming that any are meritorious). In any event, “several complaints” compared to the hundreds of millions of wireless subscribers does not justify prescriptive regulatory action, particularly without identifying a gap in the Commission’s existing toolset to address these limited concerns.

¹² See Comcast Comments at 2 n.4 (quoting FCC Chairman Ajit Pai, *The Importance of Economic Analysis at the FCC*, Remarks at the Hudson Institute, at 3 (Apr. 5, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344248A1.pdf).

¹³ In the event that any slamming-like fraud concerns arise in the wireless context, the Commission has ample tools such as Section 201 of the Communications Act to address such activity.

contributions, and Commission enforcement activities, including consent decrees with the four nationwide carriers, set clear industrywide standards.¹⁴

Some commenters nonetheless claim a continued or even increasing wireless cramming problem,¹⁵ but they rely on questionable data, dated considerations, and unsubstantiated predictions.

Questionable Data. One commenter claims that 20 percent of complaints about mobile service providers relate to unauthorized charges, but that claim is based on its own characterizations rather than the actual data as reported by the Federal Trade Commission (“FTC”).¹⁶ The published FTC data show the percentage of unauthorized charge complaints is much lower *and has decreased each year over the last three years*¹⁷:

Unauthorized Charge Complaints as Percent of Total Mobile Complaints

2014	2015	2016
1.01%	0.73%	0.44%

Source: FTC Data Book

Moreover, while carriers take all consumer complaints seriously, the complaints reflected in the FTC’s data are unverified and may not offer evidence of a problem, particularly where, like here,

¹⁴ See, e.g., CTIA Comments at 5-6.

¹⁵ See Comments of Change to Win, CG Docket No. 17-169, at 6-8 (filed Sept. 13, 2017) (“CtW Comments”).

¹⁶ CtW Comments at 6-7 n. 20 (stating it “divided the number of complaints coded with ‘unauthorized charges or debits’ that were submitted directly to the FTC (3,004) by the total number of mobile phone consumer complaints submitted directly to the FTC in that period (14,476) to get 20.75%”). The numbers used in CtW’s calculations do not reflect the data made available by the FTC.

¹⁷ Based on data from Federal Trade Commission, Consumer Sentinel Network Data Book for January – December 2016, at 84 (Mar. 2017) (“FTC Data Book”).

the number of complaints per subscriber is very low. Further, one might expect that the number of complaints would have increased in line with the dramatic increase in the number of wireless subscribers,¹⁸ but the FTC data actually shows that the number of complaints about unauthorized charges or debits in 2016 was the lowest in three years.¹⁹

Dated Considerations. Other commenters ignore developments in the last several years that have all but eliminated cramming in the wireless context and instead identify issues that had arisen in an earlier period. Consumers Union *et al.* cite the Commission and other government agencies' mobile cramming enforcement actions,²⁰ but those actions concerned activities that predated the sunset of PSMS.²¹ Consumers Union *et al.* fail to acknowledge the impact of those enforcement actions and other changes in the marketplace. Today, there is no need for a new rule. PSMS, which was the source of the vast majority of allegedly unauthorized charges, is a vestige of the past, and, consistent with the enforcement actions, the nationwide carriers have

¹⁸ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, Twentieth Report, WT Docket No. 17-69, FCC 17-126, at 12 (rel. Sept. 27, 2017).

¹⁹ FTC Data Book at 84 (reporting 1,678 complaints in 2014, 1,928 complaints in 2015, and 1,237 complaints in 2016).

²⁰ Consumers Union *et al.* Comments at 4.

²¹ Each FCC consent decree noted that the carrier had ceased offering commercial PSMS and included a commitment that the carrier would not make products available through or bill new charges for commercial PSMS. *AT&T Mobility, LLC*, Consent Decree, 29 FCC Rcd 11805, 11810 ¶ 13 (EB 2014) (“*AT&T*”); *Sprint Corporation*, Consent Decree, 30 FCC Rcd 4575, 4582 ¶ 15 (EB 2015) (“*Sprint*”); *T-Mobile USA, Inc.*, Consent Decree, 29 FCC Rcd 15114, 15119 ¶ 16 (EB 2014) (“*T-Mobile*”); *Cellco Partnership d/b/a Verizon Wireless*, Consent Decree, 30 FCC Rcd 4592, 4596 ¶ 11 (EB 2015) (“*Verizon Wireless*”).

ongoing commitments to maintain practices and processes that further protect consumers against unauthorized charges.

Unsubstantiated Predictions. Consumers Union *et al.* suggest, without more, that “[a]s consumers and providers increasingly drop traditional landline service in favor of wireless and VoIP service, it’s likely that even more customers will be defrauded when using these alternative services.”²² But this claim does not account for the protections already in place for wireless customers. Indeed, carriers have implemented practices and procedures to protect consumers consistent with the July 2014 FTC staff report on mobile cramming, which the FTC attached to its brief comment.²³ Following the report’s release, carriers made significant changes to their third-party billing practices to align those practices with the FTC recommendations. Today, carriers’ practices are consistent with, or even exceed, the recommendations the FTC staff made. For example:

- The report suggested that wireless providers should give consumers the option to block all third-party charges from their mobile phone accounts and should clearly and prominently disclose this option.²⁴ Today the nationwide carriers offer blocking at no charge and prominently disclose their blocking options.²⁵
- The report recommended that carriers implement reasonable procedures to scrutinize risky or suspicious merchants and terminate or take other appropriate steps against companies engaging in unlawful practices.²⁶ Today the nationwide carriers have

²² *Id.* at 3.

²³ See Mobile Cramming: An FTC Staff Report (July 2014) (“FTC Staff Report”), Attached to Comments of the Federal Trade Commission, CG Docket No. 17-169 (filed Sept. 13, 2017).

²⁴ FTC Staff Report at 21.

²⁵ *AT&T*, 29 FCC Rcd at 11810-11 ¶ 13; *Sprint*, 30 FCC Rcd at 4582-83 ¶ 15; *T-Mobile*, 29 FCC Rcd at 15119-20 ¶ 16; *Verizon Wireless*, 30 FCC Rcd at 4596-98 ¶ 11.

²⁶ FTC Staff Report at 26.

processes and procedures to monitor and enforce their policies against third parties that rely on carrier third-party billing.²⁷

- The report recommended that carriers implement clear and consistent processes for consumers to dispute suspicious charges on their mobile accounts and obtain refunds for unauthorized charges.²⁸ Today the nationwide carriers have specific processes in place for customers to dispute third-party charges and receive refunds when appropriate.²⁹

These procedures that wireless carriers already have in place today will protect consumers today and tomorrow.

* * *

As described above, the record lacks evidence that wireless cramming is anything other than a distant and declining concern. It also lacks evidence that imposing a new Commission rule on CMRS is necessary to protect consumers. In fact, proponents of imposing a new cramming rule on wireless carriers fail to explain why existing Commission tools, such as Section 201 of the Communications Act and the commitments made by CMRS providers, are insufficient to address any future mobile cramming concerns should they arise.³⁰

In any event, should the Commission pursue a new cramming rule applicable to CMRS, such rule should not impose strict liability on wireless carriers, which is the approach the proposed rule appears to inadvertently take. A strict liability approach is both inconsistent with

²⁷ See *AT&T*, 29 FCC Rcd at 11810-14 ¶ 13; *Sprint*, 30 FCC Rcd at 4582-87 ¶ 15; *T-Mobile*, 29 FCC Rcd at 15119-24 ¶ 16; *Verizon Wireless*, 30 FCC Rcd at 4596-4600 ¶ 11.

²⁸ FTC Staff Report at 34; see also Consumers Union *et al.* Comments at 7 (urging Commission to “outline a process” for consumers to remove unauthorized charges).

²⁹ See *AT&T*, 29 FCC Rcd at 11811-12 ¶ 13; *Sprint*, 30 FCC Rcd at 4584-85 ¶ 15; *T-Mobile*, 29 FCC Rcd at 15121-22 ¶ 16; *Verizon Wireless*, 30 FCC Rcd at 4598 ¶ 11.

³⁰ See, e.g., *AT&T* Comments at 7; *Sprint* Comments at 6.

the *NPRM*'s concerns about fraudulent actors and is otherwise unreasonable and bad policy.³¹

Case-by-case enforcement, in contrast to a strict liability approach, enables the Commission to take into account the specifics of any given situation, including, for example, whether fraudulent intent exists.³²

III. CONCLUSION

The Commission is properly focused on protecting consumers from fraud. The Commission, however, should ensure that any rules it adopts are narrowly tailored to address the problem raised by the *NPRM* – telephony fraud in the form of slam-and-cram schemes. In particular, the Commission should not extend any rules adopted in this proceeding to CMRS services, for which the record confirms there is no existing slamming and cramming problem.

Respectfully submitted,

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³¹ See, e.g., CTIA Comments at 6-8, Verizon Comments 10-11.

³² See AT&T Comments at 7.