

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

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

**REPLY COMMENTS OF CENTURYLINK**

**I. INTRODUCTION**

CenturyLink<sup>1</sup> files these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”) released July 14, 2017 in the above-referenced docket.<sup>2</sup> CenturyLink appreciates the FCC’s continued efforts to help ensure that innocent consumers are not duped by unscrupulous carriers engaging in illegal activities. The NPRM proposes rule changes in two primary areas, cramming and slamming. Oftentimes, cramming and slamming violations are linked together because a slam by its very nature begets related cramming charges. While CenturyLink agrees with many of the NPRM’s proposals related to cramming, CenturyLink supports those commenters who observe that several of the NPRM’s proposed slamming rule changes are (1) unwarranted given the current state of the wireline long distance market and (2) disproportionate in relation to the problems described in the NPRM that the FCC is trying to solve. Rather than adopting rules that are overbroad and risk unintended competitive

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<sup>1</sup> These comments are filed by and on behalf of CenturyLink, Inc. and its subsidiaries.

<sup>2</sup> *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Notice of Proposed Rulemaking, 32 FCC Rcd 6022 (2017) (“NPRM”).

consequences for questionable consumer benefit, the FCC should instead focus adopting targeted regulation only when it is clear that the benefits will outweigh the costs.

## **II. THE FCC’S CRAMMING PROPOSALS SHOULD APPLY TO ALL PROVIDERS**

As noted in the NPRM, while the FCC has punished carriers for cramming under Section 201(b) of the Act, such conduct is not expressly prohibited by the Commission’s rules.<sup>3</sup> The NPRM seeks to add a new rule, Section 64.2401(g), to address cramming:

*Prohibition against unauthorized charges.* Carriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber. For purposes of this subsection, telephone bill means any bill that contains charges for an interstate telecommunications service.

Promulgating a rule against cramming is not only common sense, but is also consistent with CenturyLink’s unifying principles.<sup>4</sup> A rulemaking proceeding is the appropriate forum to make a rule change, rather than carrier-specific enforcement proceedings which do not allow input from all affected parties. A new cramming rule would be appropriately housed in the truth-in-billing rules, as the NPRM proposes,<sup>5</sup> rather than included with the slamming rules. While slamming generally triggers cramming, not all cramming involves slamming. The rule would be unduly limited if it were made part of the slamming rules because slamming is only one of many possible types of cramming that consumers may experience. To make cramming that is

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<sup>3</sup> NPRM at ¶ 13 and Appendix A.

<sup>4</sup> <http://www.centurylink.com/asset/aboutus/downloads/community/Corporate-Social-Responsibility-Report.pdf?search=unifying%20principles> (last visited Oct. 11, 2017) (stating that CenturyLink’s “Unifying Principles represent the fundamental values upon which CenturyLink was built. They serve as the foundation upon which we continue to grow and prosper, conduct our business and relate to one another, as well as our customers, shareholders, business associates and the general public. Our Unifying Principles are Fairness, Honesty and Integrity, Commitment to Excellence, Positive Attitude, Respect, Faith and Perseverance.”).

<sup>5</sup> NPRM at ¶ 13.

unrelated to slamming illegal under the rule, it seems the rule would need to be included in the truth-in-billing portion of the regulations.

The NPRM notes that cramming rules do not apply to interconnected VoIP providers and that only some rules apply to wireless providers.<sup>6</sup> This proposed rule should be extended to CMRS, prepaid wireless and interconnected VoIP carriers to provide consumers maximum protection. Over three-quarters of customers have switched from ILEC wireline networks to interconnected VoIP and wireless networks for their voice services and it is clear that consumers view interconnected VoIP and 3G/4G wireless services as reasonable substitutes for wireline voice service.<sup>7</sup> The opportunity for cramming still exists with interconnected VoIP and wireless services.<sup>8</sup> In the interest of protecting the large numbers of consumers that subscribe to those services, the cramming rule should apply to them as well. As NTCA observes, “[r]egardless of technology or business model, misrepresentation and the deliberate imposition of unauthorized charges should not occur in today’s communications marketplace.”<sup>9</sup>

### **III. THE COSTS AND BENEFITS OF THE NPRM’S SLAMMING PROPOSALS MUST BE THOUGHTFULLY CONSIDERED AS THE WIRELINE LONG DISTANCE MARKET CONTINUES TO DECLINE**

#### **A. The FCC’s Rules Should Prohibit Harmful Conduct Previously Found to be Illegal under Section 201(b) of the Communications Act**

Enforcement actions have found that misrepresentations during sales calls are an unjust and unreasonable practice under Section 201(b) of the Act, but the Commission’s rules do not

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<sup>6</sup> NPRM at ¶ 13.

<sup>7</sup> See, e.g., *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14974-75, ¶ 3 (2014).

<sup>8</sup> See, e.g., Comments of Federal Trade Commission (attaching July 2014 Federal Trade Commission Report on prevalence of mobile cramming).

<sup>9</sup> Comments of NCTA – The Rural Broadband Association at p. 3.

expressly prohibit such conduct.<sup>10</sup> In light of these actions, CenturyLink agrees that it makes sense to codify a rule to prohibit this conduct but has some concerns shared by other commenters that the proposed rule is too overbroad. The proposed rule would revoke authorization for a carrier change if there is *any* misrepresentation or deception made on the call, regardless whether the misrepresentation or deception was an actual inducement for the customer to switch carriers or was part of an intentional practice to deceive:

Misrepresentation and/or deception on the sales call is prohibited. Authorization is not valid if there is *any* misrepresentation and/or deception when making the sales call.<sup>11</sup>

Any new rule should contain a nexus between a misrepresentation or deception and the carrier switch if the consequence of the rule is to revoke consent for the carrier switch.<sup>12</sup> In addition, the rule fails to distinguish between isolated instances of inadvertent mistakes by a provider and systemic patterns of intentional deceit. CenturyLink recommends further modifying the proposed rule to focus on bad actors who repeatedly, intentionally deceive their customers, and to avoid imposing strict liability on isolated, inadvertent errors that may occur. These steps would align with previous FCC enforcement actions and appropriately scope conduct that should be subject to punishment.<sup>13</sup>

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<sup>10</sup> NPRM at ¶ 12.

<sup>11</sup> NPRM, Appendix A (emphasis added).

<sup>12</sup> See, e.g., Comments of AT&T Services, Inc. at p. 6 (noting concern that “it’s not clear whether the rule, as proposed, would apply to any statement during a sales call that turns out not to be true – including one that has nothing to do with slamming or cramming concerns”).

<sup>13</sup> See, e.g., Comments of Verizon at pp. 10-11. See also *Birch Communications, Inc.*, File No. EB-TCD-15-00020193, Order, 31 FCC Rcd 13510 (2016).

B. It Is Unclear how Beneficial the NPRM's Other Proposed Changes Would Be

The NPRM states that there were almost 8,000 slamming and cramming complaints in 2015 and 2016,<sup>14</sup> but does not provide other key detail that would be important to justify additional regulation action to address and remedy the specific slamming problems consumers are experiencing. Moreover, as many commenters observe, other data suggests that existing rules combined with marketplace conditions have effectively curtailed slamming, making additional regulation unnecessary.<sup>15</sup>

While CenturyLink certainly does not intend to discount the experiences of those customers that have complained to the FCC over recent years, there is simply not a sufficient basis to justify further regulatory action. There is not specific information in the record about either how many complaints were cramming issues versus how many complaints were slamming issues, or about the type of illicit conduct that prompted the slams. Without more specific information on the particular problem the Commission is trying to solve, it is not possible to develop an appropriate solution that is tailored to address the issue without causing undue burden or cost.

In addition to having an ill-defined problem cautioning against further action, long distance market conditions and complaint data also both suggest that additional measures are unnecessary. The long distance market has changed substantially since slamming rules were first implemented. As noted in comments, the FCC itself has recently described stand-alone long

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<sup>14</sup> NPRM at ¶ 5.

<sup>15</sup> See, e.g., Comments of Comcast Corporation at pp. 4-5; Comments of The USTelecom Association at p. 5.

distance as a “fringe” market.<sup>16</sup> Approximately three-quarters of customers have switched from ILEC wireline networks to all-distance services like interconnected VoIP and wireless.<sup>17</sup> This movement stands to continue as wireline providers transition from legacy technologies to IP networks. Thus, there are fewer and fewer wireline consumers to protect, and therefore fewer benefits to be realized from onerous new rules. Further, even for those wireline customers that remain, stand-alone long distance is becoming irrelevant because of forbearance from equal access requirements. As Verizon states, “forbearance from equal access requirements will facilitate the overwhelming trend to all-distance services, further reducing the risk of slamming.”<sup>18</sup> As stand-alone long distance services continue to fade, so too does the risk that a customer will be a victim of slamming.<sup>19</sup>

Finally, the FCC’s own consumer inquiry and complaint data shows that slamming issues have dramatically decreased and that further action to protect against slamming is unwarranted. For example, from 2008 through 2013, slamming was routinely within the top five (5) consumer inquiries and complaints related to wireline service.<sup>20</sup> As we move into 2017, however, that is not the case. The FCC’s data shows that, in 2017, slamming represents less than 1% of the consumer complaints related to wireline service.<sup>21</sup> To highlight the declining nature of slamming issues – the FCC logged 1,432 slamming inquiries in the first quarter of 2008, but just 182

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<sup>16</sup> See, e.g., Comments of Verizon at p. 3.

<sup>17</sup> See *supra* note 6.

<sup>18</sup> Comments of Verizon at p. 6.

<sup>19</sup> *Id.*

<sup>20</sup> See <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints>

<sup>21</sup> See <https://opendata.fcc.gov/Consumer/Phone-Issues-2017-YTD-Unwanted-Calls-category-excl/82wr-ws6e>

slamming inquiries in the first quarter of 2013, representing an 87% reduction.<sup>22</sup> The intervening years during this time show a steady and persistent reduction in slamming inquiries. All of this data suggests, as Comcast also observes, “that the [FCC’s] existing safeguards against slamming have effectively addressed the abuses that were so prevalent” years ago.<sup>23</sup> Additional safeguards are simply not needed, particularly when they may have anti-competitive or other undesirable effects.

Mandatory Preferred Carrier Freezes. The NPRM proposes to mandate preferred carrier freezes to give subscribers added protection against slamming.<sup>24</sup> As discussed above, it is far from clear whether customers need additional protection from slamming, and even if they did, if this tool may do more harm than good. CenturyLink offers preferred carrier freezes to its customers who choose to have this added protection against slamming. Relatively few customers avail themselves of this alternative to help prevent unauthorized carrier switches, thus it makes little sense to make this protection mandatory. Mandating preferred carrier freezes creates additional administrative burdens for the wireline carriers that offer them, particularly when it comes to lifting a freeze to effect an authorized carrier change. Processes that are now automated would become more manual and more labor-intensive. These burdens would be greatly multiplied if preferred carrier freezes were mandated across entire ILEC customer bases. Aside from these process burdens, there are also competitive concerns associated with this proposal. As AT&T states, this requirement would, “in all likelihood, have the primary impact

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<sup>22</sup> See [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-287778A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-287778A1.pdf) (providing first quarter 2008 data) and [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-323746A3.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-323746A3.pdf) (providing first quarter 2013 data).

<sup>23</sup> Comments of Comcast Corporation at p. 5.

<sup>24</sup> NPRM at ¶ 14.

of making it more difficult for those consumers who wish to switch carriers to do so.”<sup>25</sup> Others are concerned that “a freeze would erect an artificial barrier to entry for competitive carriers – and would therefore quash the associated consumer benefits.”<sup>26</sup> Given these concerns, combined with the absence of any compelling need for a new rule, the FCC should decline to take this step.

Double-Check Carrier Switches. The NPRM’s proposal to require executing carriers to “double-check” carrier changes with a consumer<sup>27</sup> is similarly concerning. If enacted, this requirement would take automated processes already in place and render them obsolete. New processes would need to be developed to perform this double-check function, imposing new costs and burdens on an already strained wireline long distance industry.<sup>28</sup> Carrier change requests would be processed more slowly, and porting cycles would increase to the detriment of competition and consumer expectations. Given that wireline long distance is a declining market, it is illogical to take this step given these concerns unless there are clear and compelling consumer benefits that would result. As mentioned above, this does not appear to be the case.

Changes to Third Party Verification. CenturyLink has similar concerns with respect to the NPRM’s proposed modifications to the third party verification (“TPV”) method.<sup>29</sup> CenturyLink uses TPV and would be greatly impacted by changes to this form of verification. While the NPRM makes vague reference to falsified TPVs, it does not provide enough actionable information to justify either modifying, or the more extreme step of eliminating, this form of verification. In CenturyLink’s experience, this form of verification seems to generally

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<sup>25</sup> Comments of AT&T Services, Inc. at p. 8.

<sup>26</sup> Comments of Billing Services Group North America, Inc. at p. 8.

<sup>27</sup> NPRM at ¶ 22.

<sup>28</sup> See Comments of AT&T Services, Inc. at p. 5.

<sup>29</sup> NPRM at ¶ 33.



work as intended. Modifying CenturyLink's TPV processes would prove costly by requiring systems changes and employee re-training. Additional information is needed before TPV can be reasonably modified to address perceived deficiencies and be made more robust without imposing undue burdens on consumers or providers.

Sales Call Recording. To curtail misrepresentations, the NPRM proposes to require that carriers record sales calls and retain them for two years.<sup>30</sup> CenturyLink currently records most sales calls, but does not retain them for the two-year timeframe proposed by the NPRM. CenturyLink agrees with AT&T that this retention timeframe would "impose very substantial costs for building and maintaining massive amounts of storage capacity," and supports a much shorter retention timeframe if this requirement were to be adopted.<sup>31</sup> However, a cost-benefit analysis would be essential before triggering additional burdensome requirements in this area.

Third Party Billing. The NPRM seeks comment on blocking third party charges for local and long distance service by default, and only allowing such billing if a consumer affirmatively opts-in.<sup>32</sup> CenturyLink does have some limited third party billing arrangements today, as customers derive benefits from these types of arrangements. Industry-wide, as shown in the comments and consistent with CenturyLink's experience, these arrangements are becoming more rare.<sup>33</sup> Many providers offer services to allow customers to block some or all third party charges<sup>34</sup> which helps address the NPRM's concerns. The attrition in the stand-alone long

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<sup>30</sup> NPRM at ¶ 30.

<sup>31</sup> Comments of AT&T Services, Inc. at p. 11. CenturyLink agrees with the 45-day retention period proposed by AT&T. *Id.*

<sup>32</sup> NPRM at ¶ 18.

<sup>33</sup> See, e.g., Comments of AT&T Services, Inc. at p. 5, Comments of Verizon at pp. 6-7.

<sup>34</sup> See, e.g., Comments of Consumers Union et al. at p. 6.

distance market discussed above will also cause natural reductions in third party billing arrangements. Given these circumstances, it would be too heavy-handed to require a blanket, affirmative opt-in for all customers to engage in these types of arrangements, particularly when there is an existing base of customers that have chosen to use them today. To the extent the Commission adopts an opt-in rule regarding third party billing, existing consumers should be grandfathered and exempt from any opt-in requirement the Commission may adopt.

#### **IV. CONCLUSION**

CenturyLink appreciates the FCC's continued focus on consumer protection measures. As discussed above, CenturyLink agrees with many of the cramming protections proposed in the NPRM, but is concerned that many of the proposed slamming protections are not appropriately targeted to remedy the issues the NPRM identifies without unintended consequences. With complaints on the decline and the continued movement of subscribers to all-distance services, any new rules must be carefully evaluated to ensure that their costs are justified by the consumer benefits they would reasonably yield. Rather than adopting rules that are overbroad and risk harm or burden for questionable consumer benefit, the FCC should adopt targeted regulation only when it is clear that the benefits will outweigh the costs.

Respectfully submitted,

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