

May 30, 2018

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CG Docket No. 17-169, FCC Report and Order, Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges

Dear Ms. Dortch:

Consumers Union,¹ the advocacy division of Consumer Reports, commends the Federal Communications Commission (“FCC” or “Commission”) for its work to better protect consumers from cramming, in which unauthorized charges are placed on a consumer’s phone bill, and slamming, in which a consumer’s phone service is changed without his or her permission. The FCC’s new Report and Order, which it expects to consider on June 7, 2018, takes several important steps to prevent fraud, particularly by codifying rules banning cramming and material misrepresentations in sales calls.²

But we are disappointed that the Report and Order does not take more comprehensive steps to address these abuses. We reiterate the recommendations in our previous comments to this proceeding,³ and urge the FCC to clarify that the new rules apply to *all* voice service providers, including VoIP and wireless. To better address slamming, we ask the FCC to require phone companies to record sales calls involving a carrier switch, and to freeze phone service by default. To improve protections against cramming, the FCC should, at minimum, require phone companies to prohibit certain types of third-party charges, and offer wireless consumers the option to block all third-party charges, at no additional charge.

The FCC and others have worked to reduce cramming and slamming, and complaints to the FCC about these abuses have decreased in recent years.⁴ But many of the protections against cramming and

¹ Consumers Union is the advocacy 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, financial services, and competition policy, among others. Consumer Reports is the world’s largest independent product-testing organization. Using its dozens of 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 7 million subscribers to its magazine, website, and other publications.

² FCC Fact Sheet: Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges, Order, CG Docket No. 17-169 at ¶ 2 (Rel. May 17, 2018), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-350776A1.pdf [hereinafter “Report and Order”].

³ See, Comments of Consumers Union et al, CG Docket No. 17-169 (Sept. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/10914096022592/Unauthorized%20carrier%20changes%20and%20charges%20comments%20final.pdf>; Reply Comments of Consumers Union et al, CG Docket No. 17-169 (Oct. 13, 2017), *available at* <https://ecfsapi.fcc.gov/file/1014216405265/Consumer%20group%20comments%20unauthorized%20carrier%20changes%20and%20charges%20final.pdf>.

⁴ Report and Order, *supra* note 2, at ¶ 7. However, FCC complaint data may not reveal the full extent of these problems. For example, one study revealed that only 5% of the victims of one crammer were aware that they had been charged. FED. TRADE COMM’N, MOBILE CRAMMING: AN FTC STAFF REPORT 17 (July 2014), *available at*

slamming have been adopted on a voluntary basis, or as a result of enforcement actions against particular phone companies, so they are not enforceable as to all phone companies.⁵ The reduction in cramming and slamming complaints to the FCC suggests that these measures likely have been successful to the extent that companies comply with them. Extending across-the-board, robust protections will likely help reduce incidence of fraud events further.

Slamming

First, we applaud the Commission for drafting a rule to prohibit material misrepresentations in sales calls involving wireline service. The FCC already prohibits carrier changes on traditional landlines, unless certain authorization and verification procedures are followed. The proposed new rule clarifies that material misrepresentation on the sales call will void the fraudulent transaction, even if the requesting carrier appears to have obtained valid third party authorization (TPV).⁶ This should provide greater clarity and reduce the incentives for falsifying the TPV.

To fully realize the benefits of this new rule, however, the FCC should clarify that it applies to wireless and VoIP service, too.⁷ Moreover, the FCC should require voice service providers to record sales calls involving a carrier switch, as it had proposed.⁸ Some unscrupulous companies use the sales call to undermine the verification process. As the Commission notes, a representative of at least one company instructed the victim “to say ‘yes’ to all of the TPV questions.”⁹ While we understand that it may impose a modest cost for phone companies to record and store these calls, some already do so, suggesting that it is not an unreasonable request to prevent slamming.¹⁰

Additionally, we urge the FCC to not weaken the TPV. The Report and Order eliminates the requirement for telemarketers to obtain authorization from consumers for each additional service (such as for local, long distance, or interstate service), on the grounds that listing these services individually could confuse consumers.¹¹ On the contrary, eliminating this requirement would likely cause consumers to be more confused. As the Public Utility Commission of Ohio noted in an earlier proceeding, “[C]onsumers are sometimes confused about what, in fact, they are agreeing to when speaking to a third party verifier. The TPV process is largely unfamiliar to many consumers and grouping questions together increases the likelihood that consumers will not have an understanding of the transaction.”¹² Requiring the verifier to obtain consent for each service provides the opportunity to clarify the different

<https://www.ftc.gov/system/files/documents/reports/mobile-cramming-federal-trade-commission-staff-report-july2014/140728mobilecramming.pdf> [hereinafter FTC Report].

⁵ For example, with respect to slamming, providers are not required to offer a freeze on carrier changes. *See*, 47 CFR § 64.1190. Regarding cramming, in 2012, several phone companies vowed to block certain non-telecommunications third-party charges, though they are not required to do so. *See*, *Beware of Bogus Phone-Bill Fees*, CONSUMER REPORTS (Aug. 2012), <https://www.consumerreports.org/cro/magazine/2012/08/beware-of-bogus-phone-bill-fees/index.htm>. A significant consent decree also required AT&T to offer to consumers the option to block third-party charges, among other requirements. *See* Fed. Commc’n Comm’n, Order, In the Matter of AT&T Mobility Unauthorized Third-Party Billing Charges (Rel. Oct. 8, 2014), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-14-1457A1.pdf.

⁶ Report and Order, *supra* note 2, at ¶ 18.

⁷ *See* 82 Fed. Reg. 37831 at ¶ 6 (“The Commission notes that its slamming rules currently do not apply to CMRS, prepaid wireless, or interconnected Voice over Internet Protocol (VoIP).”) [hereinafter “Proposed Rules”].

⁸ *Id.* at ¶ 24.

⁹ Fed. Commc’n Comm’n, Notice of Proposed Rulemaking, CG Docket No. 14-169 at ¶ 8 (Rel. July 14, 2017), *available at* <https://ecfsapi.fcc.gov/file/0714146504364/FCC-17-91A1.pdf>.

¹⁰ Report and Order, *supra* note 2, at ¶ 23.

¹¹ *Id.* at ¶ 27.

¹² Comments of the Public Utilities Commission of Ohio, CG Docket No. 94-129 at 5 (June 2, 2003), *available at* <https://ecfsapi.fcc.gov/file/6514156540.pdf>.

components of a package, in plain language. Given the too-frequent misuse of the TPV, steps should be taken to strengthen it, not weaken it.

Third, the FCC should give consumers greater opportunity to “freeze” their phone service, ideally by requiring phone companies to freeze service by default, as suggested in the proposed rules,¹³ or if not, at least as an opt-in. This would ensure that consumers can take advantage of this comprehensive protection against slamming.

Cramming

We appreciate that the Report and Order codifies a rule prohibiting cramming on wireline and wireless phone service.¹⁴ This new rule will send a clear message to fraudsters that the behavior is illegal. We particularly appreciate that the new rule applies to wireless, which, as noted in the proposed rules, is currently exempt from most cramming and slamming regulations.¹⁵ However, the FCC should clarify that the rule covers VoIP providers as well. Complaint data reveals that consumers with all types of phone service are susceptible to fraudulent cramming charges.¹⁶

In addition, the FCC should do more to help consumers proactively block fraudulent charges. It should prohibit non-telecommunications related charges, such as for emailing and web hosting, to wireline and VoIP accounts. The Federal Trade Commission (FTC) found that these charges are rarely used for legitimate purposes,¹⁷ and major providers agreed to block their use in 2012.¹⁸ The FCC should codify this practice in its Truth-in-Billing rules. And, consistent with recommendations by the Federal Trade Commission, the FCC should require all wireless providers to obtain informed written consent before authorizing third-party wireless charges, and to offer a free opt-in to block all third-party wireless charges.¹⁹

Finally, many of these fraudulent crams or slams result from interactions with unscrupulous telemarketers. This highlights the importance of a strong Telephone Consumer Protection Act (TCPA) and ensuring that consumers have access to free, effective call-blocking tools. We urge the FCC to redouble its efforts against unwanted calls. Thank you again for your attention to these issues, and for your commitment to protecting consumers from fraud.

¹³ Proposed Rules, *supra* note 7, at ¶ 8.

¹⁴ Report and Order, *supra* note 2, at ¶ 24. The FCC has previously taken action against cramming using its authority under the Communications Act to address “unjust and unreasonable” charges and practices. See 47 U.S.C. § 201(b).

¹⁵ Proposed Rules, *supra* note 7, at ¶ 6.

¹⁶ FCC Complaint data reveals that since October 2014, consumers have filed 7,650 complaints about wireless cramming, <https://opendata.fcc.gov/Consumer/Cramming-data-wireless/3wbw-zatz/data>; 2,574 regarding “wired” accounts, <https://opendata.fcc.gov/Consumer/Cramming-data-wired/vhnx-i42w/data>; and 491 regarding “VoIP” service, <https://opendata.fcc.gov/Consumer/Cramming-data-VoIP/ka2g-nfzz/data> (accessed May 27, 2018).

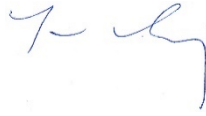
¹⁷ Comment of the Federal Trade Commission, CG Docket No. 11-116 3 (Oct. 2011), *available at* https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-federal-communicationscommission-concerning-placement-unauthorized-charges-telephone.11-116-09-158-and-98-170/111227crammingcomment.pdf.

¹⁸ *Beware of Bogus Phone-Bill Fees*, CONSUMER REPORTS (Aug. 2012),

<https://www.consumerreports.org/cro/magazine/2012/08/beware-of-bogus-phone-bill-fees/index.htm>.

¹⁹ FTC Report, *supra* note 4, at ii. Note, however, that we request that wireless providers be required to obtain informed written consent, rather than the FTC’s recommendation that “express, informed consent,” be obtained. It is important that written consent is required so that consumers are protected under the E-Sign Act. *See*, 15 U.S.C. § 7001(c).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Maureen Mahoney', with a stylized, cursive script.

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