

**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	)	

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) supports the Commission’s goal of protecting consumers from unauthorized changes to their selected telecommunications carriers, but urges the Commission to ensure that consumers are not hindered from legitimately changing providers. Specifically, the Commission should not require mandatory preferred carrier freezes and it should replace the third-party verification (TPV) process with a requirement to instead record a customer’s request to change telecommunications carriers.

**INTRODUCTION**

In its notice of proposed rulemaking, the Commission recognizes that some unscrupulous carriers engage in the practice of “slamming,” which is changing a customer’s telecommunications service provider without permission.<sup>1</sup> The Commission states, “These carriers misrepresent who they are and why they are calling, fraudulently verify carrier changes, and cram long-distance charges onto consumers’ bills.”<sup>2</sup> It is appropriate and commendable for the Commission to examine ways to punish these dishonest carriers and to protect consumers from falling victim to their ploys. However, the Commission should take care not to introduce

---

<sup>1</sup> *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Notice of Proposed Rulemaking, FCC 17-91, ¶1 (July 14, 2017) (*NPRM*). As the Commission notes in the *NPRM*, the slamming rules do not apply to interconnected VoIP service. *Id.* at ¶12.

<sup>2</sup> *Id.* at ¶5.

unwarranted complexity into consumers' ability to quickly and easily switch between competitive communications offerings and packages that meet their needs.

**I. THE COMMISSION SHOULD NOT MANDATE PREFERRED CARRIER FREEZES OR REQUIRE REVERIFICATION OF CHANGE REQUESTS**

In the *NPRM*, the Commission seeks comment on two proposals to reduce the incidence of slamming – imposing a mandatory freeze on customers' preferred carriers, or requiring the carrier that is losing the customer to verify that the customer wants to switch providers. For the reasons explained below, both of these proposals should be rejected.

**A. The Commission Should Not Impose a Mandatory Preferred Carrier Freeze**

Mandatory preferred carrier freezes are an overbroad solution to the slamming problem that will only serve to confuse consumers and hinder their ability to make legitimate provider changes. The Commission states that there were over 8000 complaints regarding slamming and cramming during 2015 and 2016.<sup>3</sup> Even if this number is understated as the Commission suggests,<sup>4</sup> it represents a miniscule fraction of the tens of millions of customers that change carriers each year.<sup>5</sup> Any proposal to address slamming complaints must be sensitive to the impact on the much larger universe of change requests made by American consumers.

The imposition of a federal mandate freezing the carrier selections of hundreds of millions of customers is a recipe for chaos and would add the type of “regulatory underbrush” that this Commission appropriately has been looking to eliminate. Customers should not have to contact their existing carrier to lift a freeze, which they did not request and may not want, before

---

<sup>3</sup> *Id.* at ¶5

<sup>4</sup> *Id.* at ¶5 n.14.

<sup>5</sup> See *Numbering Resource Utilization in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 14 (Apr. 2013).

changing providers. Nor should they have to wait for their original carrier to contact them to verify their requested provider change. Imposing these requirements will inhibit competition and consumer choice, and could also impede customers' ability to take advantage of broadband offerings that are bundled with voice service.

In the *NPRM*, the Commission asserts that default freezes would “give consumers more control to prevent slamming,”<sup>6</sup> but in fact, the Commission previously has found exactly the opposite to be the case. In the *Slamming Second Report and Order*, the Commission held, “because preferred carrier freezes by their very nature impose additional burdens on subscribers, freezes should only be placed as a result of consumer choice. The preferred carrier freeze works to prevent slamming because it gives a consumer control over carrier changes. The imposition of an ‘unauthorized preferred carrier freeze’ by an executing carrier would take away control from the consumer.”<sup>7</sup>

Additionally, the delay that would necessarily occur if every carrier change involved lifting a freeze could cause numbering exhaust issues. To avoid the delay, customer annoyance, and potential retention marketing that dealing with an existing carrier could entail, providers could simply assign customers a new number and seek to port the original number at a later date, after the customer's account with the original provider has been terminated. Such an approach would be an entirely rational response to a mandatory preferred carrier freeze, but it would be a wasteful use of limited numbering resources. The Commission should avoid putting providers in a position where such an approach may be a preferable option.

---

<sup>6</sup> *NPRM*, FCC 17-91, ¶14.

<sup>7</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1569, ¶100 (1998) (*Slamming Second Report and Order*).

**B. The Commission Should Not Require or Permit Carriers to “Double Check” a Customer’s Change Request**

For similar reasons, the Commission should not require an existing carrier to “double check” a customer’s decision to switch providers before allowing the change. This is a recipe for anticompetitive delays and tactics on the part of the original carrier, which will then have the ability and incentive to attempt to dissuade the customer from changing to the new provider. The Commission asserts that, if it were to adopt such a reverification requirement, executing carriers would be prohibited from engaging in retention marketing when they contact customers to confirm a change request.<sup>8</sup> But the Commission proposes no way to monitor such a requirement and ensure that the original provider does not attempt to win back the customer in the course of the reverification process, and enforcement of such a rule through the complaint process can be a lengthy, expensive approach for providers to pursue and would not remedy the new provider’s problem of a lost customer.

Even if executing carriers do not engage in retention marketing, an independent reverification requirement still would have adverse effects on competition. The Commission has examined such a proposal before and correctly rejected it, stating: “Although we agree that verification by executing carriers of carrier changes could help to deter slamming, we find that permitting executing carriers to verify independently carrier changes that have already been verified by submitting carriers could have anticompetitive effects. We have concerns that executing carriers would have both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates.”<sup>9</sup> The same

---

<sup>8</sup> *NPRM*, FCC 17-91, ¶29.

<sup>9</sup> *Slamming Second Report and Order*, 14 FCC Rcd at 1568, ¶99.

anticompetitive concerns exist today and the Commission should again decline to adopt a reverification requirement.

Furthermore, the Commission previously has found, and the D.C. Circuit has agreed, that executing carriers cannot contact a customer when another provider submits a request to transfer the customer because this would violate the confidentiality requirements of section 222(b) of the Communications Act.<sup>10</sup> Although the Commission recognizes this prohibition in the *NPRM*, it tentatively concludes that the exception to protect against fraudulent use of a service in section 222(d)(2) of the Act “supports our proposal to allow the executing carrier to use the customer information to re-verify that the consumer wants to change providers.”<sup>11</sup> The Commission’s tentative conclusion is incorrect. The exceptions listed in section 222(d) allow a telecommunications carrier to use customer proprietary network information “obtained *from its customers*.”<sup>12</sup> The information at issue here is not provided by a telecommunications carrier’s customers, but by another provider.<sup>13</sup> Section 222(b) covers information obtained from another provider, but the exceptions in section 222(d) do not. Therefore, the exception does not apply and executing carriers are barred from using change request information from another provider to contact a customer to confirm the change.

---

<sup>10</sup> 47 U.S.C. § 222(b); *Slamming Second Report and Order*, 14 FCC Rcd at 1568, ¶99; *Verizon California, Inc. v. FCC*, 555 F.3d 270, 272-73 (D.C. Cir., Feb. 10, 2009) (“[W]e note our agreement with the Commission ‘that advance notice of a carrier change that one carrier is required to submit to another is carrier “proprietary information” under section 222(b).’”).

<sup>11</sup> *NPRM*, FCC 17-91, ¶¶27-28.

<sup>12</sup> 47 U.S.C. § 222(d)(2) (emphasis added).

<sup>13</sup> The exceptions in section 222(d) apply to information that a carrier receives from its customers “either directly or indirectly through its agents.” 47 U.S.C. § 222(d). A competing provider that is taking a customer away from a carrier cannot be considered an agent of the executing carrier.

For all of these reasons, the Commission should not adopt its proposal to mandate preferred carrier freezes or to require, or even allow, executing providers to verify a customer's request to change providers.

## **II. THE COMMISSION SHOULD REPLACE THE TPV PROCESS WITH A REQUIREMENT TO RECORD CUSTOMERS' CHANGE REQUESTS**

---

The TPV process is extremely costly and burdensome for telecommunications carriers, and, as the *NPRM* makes clear, has not eliminated the slamming problem. It is also confusing for customers, who often do not understand the requirement that they speak to a third-party verifier, even after it has been explained to them by a customer service representative. Customers often hang up before completing the TPV process, requiring the carrier to conduct follow-up calls, which are costly for the carrier and frustrating for the customer. The Commission should eliminate the TPV requirement and instead adopt a requirement that a carrier record customers' requests to change providers through either an audio recording or a digital consent mechanism.<sup>14</sup>

## **III. THE COMMISSION SHOULD BAN ONLY INTENTIONALLY DECEPTIVE MISREPRESENTATIONS**

---

In the *NPRM* the Commission proposes to adopt a new rule "banning misrepresentations on the sales calls and stating that any misrepresentation or deception would invalidate any subsequent verification of a carrier change, even where the submitting carrier purports to have evidence of consumer authorization (*e.g.*, a TPV recording)."<sup>15</sup> The object of the new proposed

---

<sup>14</sup> The Commission also should make clear that carriers can use plain language descriptions of the services being purchased. Section 64.1120(b) currently references intraLATA and interLATA toll services, but customers generally do not know what these terms mean. 47 C.F.R. §64.1120(b). The Commission should make clear that carriers can use terms that customers are more likely to understand, such as local, long distance, and international voice service, when confirming an order for service.

<sup>15</sup> *NPRM*, FCC 17-91, ¶12.

rule is to eliminate slamming, so the Commission should ensure that the requirement applies to deceptive sales calls that are designed to trick a customer into changing providers when they do not wish to do so. Any such requirement should be limited to practices that are intended to deceive customers; carriers should not be subject to liability for inadvertent mistakes made by customer service representatives.<sup>16</sup>

### **CONCLUSION**

In examining ways to protect consumers from fraudulent and unauthorized changes to their telecommunications service providers, the Commission should take care not to impede their ability to take advantage of competitive alternatives available in the marketplace. Customers should be able to make valid changes easily and without obstruction from their current carriers.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Jennifer K. McKee  
NCTA – The Internet & Television  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, D.C. 20001-1431

September 13, 2017

---

<sup>16</sup> Similarly, if the Commission adopts its proposal to codify a rule prohibiting the placement of unauthorized charges on customer bills (cramming), it should make clear that the rule would apply only to intentionally deceptive charges, and not to inadvertent billing errors. *Id.* at ¶13.