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

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

Comments of Verizon

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September 13, 2017

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I. Introduction and Summary

Slamming and cramming – when such activities occur – harm consumers. As the Commission has observed, in those limited cases when an unscrupulous provider changes a customer's long-distance service provider without her consent and then surreptitiously inserts unrequested long-distance charges on the customer's telephone bill, customers are confused and exposed to improper costs.[1] But customers today face a reduced risk of this happening, since the market has moved toward all-distance services and away from third-party billing. The Commission therefore must be careful to balance any new slamming and cramming restrictions against the market changes that have made the practice less prevalent.

When the Commission first adopted its slamming rules, most consumers obtained their long-distance telephone service separately from their local service. Because their local and long-distance service was often from different providers, customers then were at greater risk that a bad-actor would try to slam their long-distance away from the consumer's chosen carrier to itself. But today, the long-distance market has changed dramatically, and the opportunities for

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[1] *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking, 32 FCC Rcd 6022, ¶¶ 5-10 (2017) ("*NPRM*").

slamming and cramming are rapidly declining.[2] Customers today have moved en masse to all-distance services and service bundles. A resurgence of "long distance" is unlikely. Indeed, recognizing the change in customers' preferences, the Commission has eliminated equal access requirements. Further, the market has moved away from offering third-party billing services which could allow cramming to occur. With these changes, standalone wireline long-distance offerings will likely continue to decrease, which reduces significantly the need for broad new slamming and cramming rules.

If the Commission determines that new slamming and cramming rules are warranted, it should ensure that such rules are narrowly tailored to meet today's and future market dynamics, and do not impose undue burdens on customers or legitimate service providers. For example, any new slamming and cramming rules should not apply when a carrier provides no option to select a separate long-distance provider, or when a carrier does not offer third party billing for unaffiliated telecommunications services. In either of these circumstances, customers have no risk of being slammed or having unlawful third party charges on their bills, and thus, there's no need for slamming or related cramming rules. In particular, because neither Commercial Mobile Radio Service (CMRS) or interconnected Voice over Internet Protocol (VoIP) services offer separate long-distance, they should not be subject to new slamming or cramming requirements.

Even for those carriers who do offer services arguably susceptible to slamming and cramming, the Commission should not adopt the *NPRM*'s proposals to change preferred carrier freezes and third-party verification procedures that require an executing carrier to verify the customer's choice and obligate carriers to record sales calls. These proposals burden service providers and customers alike and would be costly to implement with minimal corresponding

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2 *Id.*, ¶ 3, n.2; *see also* 47 C.F.R. §§ 64.1100 – 64.1195.

customer benefits. The Commission should instead eliminate third-party verification requirements when the customer is buying an all-distance bundle of voice services, particularly in states that require third-party verification for changes in local "dial tone" services.

II. Marketplace Changes Are Eliminating The Opportunities For Slamming And Cramming.

The *NPRM* is focused on instances where a new long-distance provider improperly switches a customer's service to itself without the customer's consent, and them imposes new long-distance charges on the customer's local telephone bill.[3] As the Commission has noted, this type of fraud can surreptitiously impose costs on consumers and increase customer confusion.[4] But as the communications market has evolved, the opportunities for bad actors to engage in slamming and cramming of long-distance services have declined.[5] These market realities reduce the need for onerous slamming and cramming rules.

A. Changes in the Marketplace for Long-Distance Service Have Reduced the Risk of Slamming.

The long-distance market, if such a thing even exists anymore, has changed dramatically, reducing opportunities for an unscrupulous provider to switch a customer's long-distance service without consent. The Commission has, over the past decade or more, correctly described "stand-alone long-distance as a 'fringe' market."[6] Most landline customers no longer purchase long-

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3 *NPRM* ¶¶ 5-9.

4 *See id.*

5 By contrast, it is more difficult for a service provider to switch improperly a customer's local telephone service without the customer noticing because such a change often requires a service technician to visit the customer's premises (for example, to connect the correct facilities at the Network Interface Device) and results in different billing arrangements.

6 *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157, ¶ 49 (2015) ("*USTelecom Forebearance Order*"). *See SBC Communications Inc. and AT&T Corp. Applications for*

distance and local services separately from different carriers, electing instead to purchase all-distance services such as CMRS, interconnected VoIP, and bundled wireline from a single provider.

The fringe nature of the standalone long-distance market is confirmed by the lack of demand for separate long-distance services.[7] The number of customers nationwide across all carriers for whom standalone long-distance service would even be a possibility continues to decline precipitously.[8] This decline reflects a market preference for mobile[9] and VoIP[10] services for which the concept of standalone long-distance service is meaningless. Indeed, in response to

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Approval of Transfer of Control, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 91 (2005); *Section 272(f)(1) Sunset of the BOC Separate Affiliate & Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, ¶ 23 (2007).

7 *See NPRM* ¶ 14 n.45 (citing Federal Communications Commission, *Voice Telephone Services: Status as of June 30, 2016* (2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf ("*2016 Voice Telephone Services Report*")); *see also USTelecom Forebearance Order*, ¶ 49.

8 The number of retail switched access lines declined from approximately 90 million to less than 63 million between 2013 and 2016. *2016 Voice Telephone Services Report* at 2, Figure 1.

9 For example, between 2013 and 2016, mobile voice subscriptions increased from 306 million to 338 million, an increase of ten percent. *Id*. As customers increasingly subscribe to mobile voice services to meet their communications needs, they often forego wireline voice services altogether. In the second-half of 2016, half of all U.S. households had at least one mobile phone but did not have a landline telephone, and this chord-cutting trend will only continue to accelerate. Dr. Stephen J. Blumberg & Julian V. Luke, Nat'l Ctr. For Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey*, July–December 2016 at 2 (May 2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf. Even among those adults who still have landline phones, many receive all or almost all their calls on their mobile phones. *Id*. (noting that 41 million adults live in households where they receive all or almost all their calls on their mobile phones).

10 Like mobile services, interconnected VoIP services continue to displace traditional wireline voice services. Between 2013 and 2016, the number of interconnected VoIP subscribers grew from 45.3 million to 60.3 million, an increase of 33 percent. *2016 Voice Telephone Services Report* at 2, Figure 1.

declining demand, carriers increasingly have sought and received Section 214 authorization to discontinue their separate long-distance services.[11] While some carriers, including Verizon, still give their local customers the option to use a different long-distance provider, few customers (and virtually no new customers) take advantage of this option. Only a small and declining percentage of Verizon's customers purchase long-distance service from a different provider and Verizon adds almost no new subscribers that choose a different long-distance provider.

With fewer and fewer customers purchasing long-distance services from a standalone long-distance provider and with more and more customers opting for all-distance services, the risk of slamming is reduced. The Commission should take these market realities into account in considering any new slamming rules.

B. Changes in the Regulatory Landscape Reduces the Risk of Slamming.

In addition to market changes, changes in the regulatory landscape have reduced slamming opportunities for bad actors. In 2015, the Commission granted forbearance from the Commission's equal access rules, which had required incumbent carriers to provide standalone long-distance service providers with exchange access equivalent to that available to the incumbent's long-distance offerings or that of their affiliates.[12] The Commission held that "equal access obligations do not play the important role that they once did to safeguard interexchange competition" due to the trend from standalone long-distance offerings to all-

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[11] *See*, *e.g.*, Section 63.71 Application of Aerialink, Inc., WC Docket No. 17-33 (filed Jan. 17, 2017); Section 63.71 Application of Qwest Corporation d/b/a CenturyLink QC, WC Docket No. 16-39 (filed Feb. 10, 2016); Section 63.71 Application of Sprint Communications Company L.P., WC Docket No. 15-186 (filed June 19, 2015).

[12] *USTelecom Forebearance Order* ¶ 46. The Commission preserved equal access requirements for existing customers presubscribed to a standalone long-distance provider.

distance packages.[13] Because these all-distance packages are often provided by mobile and VoIP providers, which are not subject to equal access requirements, the Commission found that its equal access rules were unnecessary and discriminatory.[14]

As a practical matter, forbearance from equal access requirements will facilitate the overwhelming trend to all-distance services, further reducing the risk of slamming. Standalone long-distance services will become even less relevant in the marketplace, as customers increasingly take advantage of the benefits of all-distance services. As the number of customers served by standalone long-distance providers continues to dwindle, the risk that a customer will be slammed by an unscrupulous long-distance provider dwindles as well.

C. The Decline in Third-Party Billing Services Reduces the Risk of Cramming.

Third-party billing services by incumbent wireline providers have largely become a relic of a bygone era. In the past, telecommunications carriers offered third-party billing services so that a third-party provider could include charges for its standalone services on the carrier's phone bill. But today, with customers increasingly buying all-distance services, there is little demand for standalone service offerings, and thus little practical demand for third-party billing services. While third-party billing may at one time have provided a helpful platform for long-distance providers to bill customers, the Internet, among other things, provides carriers numerous ways to bill directly for service, making local carrier third-party billing even less important to competitors.

Consistent with this market reality, Verizon's landline service providers have essentially ceased offering third-party billing services. Verizon discontinued third-party billing for non-

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13 *Id.* ¶ 49.

14 *See id.* ¶ 54.

telecommunications-related services in 2012.[15] In 2016, Verizon applied for and received Section 214 authorization to discontinue third-party billing for telecommunications services.[16] As Verizon told the Commission at the time, third-party billing is an "outdated legacy service[] that ha[s] largely fallen out of use."[17] Verizon has been eliminating its landline third-party billing arrangements with aggregators since then. Other providers have also discontinued these services. For example, in 2016, AT&T filed for and received permission from the FCC to discontinue offering some third party telecommunications services.[18]

With the decline in third-party billing services, the risk of cramming the charges of an unauthorized new long distance carrier has declined as well. Absent a mechanism for a third-party carrier to place its charges on a subscriber's telephone bill, subscribers are not exposed to the placement of unauthorized charges on that bill.[19]

III. The Commission Should Target Any New Rules To Address Slamming And Cramming Without Imposing Undue Costs On Carriers Or Burdening Consumers.

Given the market realities that have fundamentally altered the opportunities for slamming and cramming to occur, any new rules to address these issues should be carefully tailored to

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15 *See* Letter from Ian Dillner, Verizon, to Marlene Dortch, CG Docket Nos. 11-116, 98-170, and 09-158 (March 23, 2012) (describing Verizon's plans to eliminate several types of wireline third-party billing).

16 *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Services*, Public Notice, 31 FCC Rcd 7376 (2016).

17 *Section 63.71 Application of Verizon*, WC Docket 16-219 at 3-4 (filed June 7, 2016). For example, in Spring 2016, Verizon's collect calls made up just 0.34% of the overall operator services calls and person-to-person billed calls were just 0.02%, with calls billed to third party at just 0.009% of the total operator services calls. *Id*. at 5.

18 *See Comments Invited On Application of AT&T Services, Inc. On Behalf Of Affiliates To Discontinue Domestic Telecommunications Services*, Public Notice, 31 FCC Rcd 209 (2016).

19 *See* 47 C.F.R. § 64.2401(g) (proposed rule) (prohibiting carriers from placing or causing to be placed "on any telephone bill charges that have not been authorized by the subscriber").

avoid unnecessary burdens on customers and providers. For example, the rules should not apply when there exists no possibility of long-distance slamming – as when customers subscribe to services that do not have the option of selecting a separate long-distance provider – nor should they apply when carriers do not offer third-party billing for unaffiliated telecommunications services, since there is no way for cramming third parties to illicitly add charges to a customer's bill. In particular, the Commission should not extend slamming or cramming rules to CMRS or interconnected VoIP providers. There is no evidence that slamming or cramming is a problem for these services – which makes sense, since neither CMRS nor interconnected VoIP providers offer separate long-distance service.

Finally, the Commission should reject proposals that burden service providers and customers alike. Rather than changing preferred carrier freezes or increasing third-party verification obligations (by mandating either additional verifications or recording of sales calls),[20] the Commission should instead look to streamline verification requirements that have become unnecessary. For example, the Commission should eliminate third-party verification requirements when the customer is buying a bundle of services and in states that require third-party verification for changes in local "dial tone" services.

A. Any New Slamming and Cramming Rules Should Only Apply When Customers Are at Risk of Being Slammed or Crammed.

There is no need to apply slamming and cramming rules when customers are not at risk of being slammed or crammed. As noted above, given the market changes, many customers are no longer susceptible to this kind of fraud, and thus, new rules or obligations are unnecessary. This includes customers who do not have the option of electing a separate long-distance provider

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[20] *See generally NPRM* ¶¶ 14-35.

and customers of carriers that have eliminated third-party billing for unaffiliated telecommunications services. Thus, for example, the proposal requiring opt-in consent for third-party billing services should only apply to those providers that offer such services.[21] The Commission can accomplish this result either by adding an exception for providers that have discontinued third-party billing services or by applying the rule as a condition of engaging in third-party wireline billing.

In particular, the Commission should not extend the new rules to customers of VoIP and mobile services. There is no evidence that customers purchasing CMRS or interconnected VoIP services have been the victims of slamming or cramming. The Commission acknowledges as much, noting "the lack of complaints and enforcement actions about CMRS and interconnected VoIP."[22]

That CMRS and interconnected VoIP services are not susceptible to slamming and related cramming should not be surprising. CMRS and interconnected VoIP providers do not offer separate long-distance services, which means that slamming is not a problem.[23] Furthermore, the provisioning processes for CMRS and interconnected VoIP protect customers from slamming. CMRS service requires a mobile device and a SIM card, while interconnected VoIP service either requires a router (fixed) or a credit card (nomadic).[24] Absent any evidence

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21 *NPRM* ¶¶ 18-19.

22 *Id*. ¶ 18.

23 *See*, *e.g.*, 47 U.S.C. § 332(c)(8) (declaring that providers of "commercial mobile services … shall not be required to provide equal access to common carriers for the provision of telephone toll services.").

24 Although unrelated to the slamming-related cramming at issue in this docket, we note that the four major wireless providers have each agreed to strict conditions on the use of wireless third-party billing. *See*, *e.g.*, *Cellco Partnership d/b/a Verizon Wireless; Unauthorized Third Party Billing Charges*, Consent Decree, 30 FCC Rcd 4590 (2015).

that slamming or related cramming is a problem in the CMRS or interconnected VoIP sectors, the Commission should not create unnecessary obligations.

Finally, should the Commission determine that a new rule is necessary to prevent slamming offenders from placing their unauthorized carrier charges onto a customer's bill, the Commission should do so within the confines of the slamming rules.[25] The narrow factual context of this rulemaking is focused on slamming, with the cramming aspects entirely flowing from the primary slamming offense. This dishonest behavior is inextricably linked to slamming, and should be treated as such. Indeed, the recent enforcement actions that are highlighted in the *NPRM* and that serve as the evidentiary predicate for the Commission's proposed rules involved combined slamming and cramming of long-distance services.[26]

B. The Commission Should Ensure That Its Rules Do Not Result in Strict Liability

Should the Commission adopt direct rules prohibiting slamming and cramming, the rules should be carefully crafted to avoid unfair or improper liability on providers acting in good faith and with reasonable diligence.[27] Verizon shares the Commission's concerns about these practices and agrees that the Commission needs tools to go after bad actors who engage in such practices. But the Commission should understand that, despite a carrier's best efforts, it remains possible that an employee might unintentionally or mistakenly say something incorrect during a sales call. In these cases, imposing liability is unwise. A carrier should not be strictly liable for

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25 *See NPRM* ¶ 13.

26 *See*, *e.g.*, *OneLink Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403 (2016); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 1371 (2015); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014).

27 *NPRM* ¶¶ 12-13, App. A.

an isolated mistake that occurs despite the training its employees undergo. Indeed, a strict liability approach is at odds with Section 201 of the Communications Act, which requires carriers to adopt "practices" that are "just and reasonable," and focuses the Commission on declaring unlawful "practice[s]" that are "unjust or unreasonable."[28] Isolated mistakes are not "practices." The Commission should clarify that any new rule will not include a strict liability standard and that, consistent with the Communications Act, enforcement efforts will focus on carriers who engage in patterns or practices of misrepresentation and deception. These are the true bad actors who take advantage of consumers.

C. The Commission Should Not Adopt Proposed Slamming and Clamming Rules When Other Consumer Protections Are Present.

Even when applied solely in instances where slamming and cramming is possible, the Commission's proposals to change preferred carrier freezes and third-party verification procedures will impose significant costs on carriers.[29] In order to implement these proposals, carriers would be required to make major and costly changes to software and billing systems, develop new verification protocols, modify sales materials, and retrain personnel responsible for complying with these new regulatory requirements.[30] The Commission should consider whether these costs are appropriate when they far outweigh the possible benefits to consumers, given the changes in the marketplace discussed above.

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28 47 U.S.C. § 201(b).

29 *NPRM* ¶ 14 (proposing to make preferred carrier freezes the default), ¶ 34 (seeking comment on proposals to validate third-party verification processes).

30 The Commission's view that making preferred carrier freezes the default would require nothing more than "changing a field in a preexisting database" is mistaken. *NPRM* ¶ 16.

1. Requiring the Executing Carrier to Double-Check Consumer Choices Would Be Burdensome and Would Disserve Customers.

The Commission should not "require an executing carrier to confirm or 'double-check' whether the consumer wants to switch providers before making the change."[31] However well-intentioned this proposal, it would be burdensome to implement, would confuse customers, and would delay effectuating a customer's request to change service providers.

Regardless of the method by which any "double-check" would occur (*e.g.*, letter, email, or phone call), the executing carrier would be required to make costly and delay-inducing system modifications to confirm and complete an order to switch providers. Indeed, the Commission recognized almost 20 years ago the expense that the executing carrier would incur in verifying whether its customer wants to change carriers.[32] While much has changed in the market in the intervening time, the costs associated with customer verification remain.

A "double-check" requirement also would disserve consumers. First, verification by the executing carrier would likely confuse and potentially anger customers who want service from a new provider but are now being contacted by the carrier they are leaving. That confusion would also create a new barrier to effectuating the carrier change because customers may not appreciate the significance of the verification request to complete their order. Second, as the *NPRM* recognizes, it creates a new opportunity exists for competitive mischief if the executing carrier is required to contact the customer to verify his or her request to change service providers.[33] Finally, a verification requirement for long distance changes could impose cost to and delays for

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[31] *NPRM* ¶ 22.

[32] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, ¶ 98 (1998).

[33] *NPRM* ¶ 29.

consumers with little corresponding value because sufficient alternative protections that match today's marketplace already are in place to protect consumers from this type of slamming and cramming fraud.[34]

2. Requiring That Carriers Record Sales Calls Would be Burdensome and Would Not Benefit Consumers.

The Commission should not require that carriers relying on third-party verification "record the entire sales call that precedes a switch."[35] First, recording the entirety of such a call and maintaining that recording for two years would be a burdensome undertaking. Even if such calls are recorded, maintaining a copy of these calls for two years would create a huge number of additional customer records that require costly storage and protection. Second, a "sales call" is an amorphous concept, and the premise of the proposal ignores that a "sales call" is not the only customer contact that could result in the customer requesting to change service providers. For example, a customer may request a change during a routine customer care call or may affirmatively reach out to a carrier to change service. Thus, recording "sales calls" could require significantly overbroad recording and storage of myriad customer interactions. Third, the proposal is unclear whether the recording requirement would apply only to standalone long-distance providers or any provider that offers long-distance services, even if on a consolidated all-distance calling plan. Finally, requiring that sales calls be recorded would not "deter misrepresentation" or "aid enforcement."[36] An unscrupulous provider engaged in slamming has

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[34] Indeed, a verification requirement would not result in any consumer benefits if the Commission were to adopt its preferred carrier freeze proposal because the consumer consent obtained in the "double check" would duplicate that provided to lift the freeze. *NPRM* ¶ 14.

[35] *NPRM* ¶ 30.

[36] *Id.*

no qualms about disregarding the Commission's rules intended to deter such conduct.[37] Thus, the Commission should be under no illusion that a provider that misrepresents information to consumers during a sales pitch will comply with any recording rule, meanwhile leaving other carriers saddled with unnecessary compliance costs.

3. Eliminating Third-Party Verification for Bundled Long-Distance Service Would Not Harm Consumers.

In many cases, third-party verification can be eliminated as a means of providing evidence that a customer wishes to switch long-distance carriers, as the Commission has proposed.[38] In today's "bundled-oriented marketplace," the concept of a separate long-distance carrier has become anachronistic. The same is true for the need to verify a customer's desire to change long-distance providers when the customer is buying a bundle of services.

The need for third-party verification when a customer requests to change long-distance providers is even less necessary in states that require third-party verification for changes in local "dial tone" services.[39] Such state requirements provide similar protection from slamming for customers of all-distance packages. Any such rules going forward should apply only to carriers that continue to offer standalone long-distance service. This approach appropriately protects customers from the risk of being slammed by an unscrupulous long-distance provider only in circumstances when such protections are reasonably necessary.

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37 *See NPRM* ¶ 6 & n.19.

38 *NPRM* ¶ 33.

39 *See*, *e.g.*, Cal. Pub. Util. Code § 2889.5; 16 Tex. Admin. Code § 26.130; 220 Ill. Comp. Stat. 5/13-902.

IV. CONCLUSION

As the Commission considers proposals to address slamming and cramming, it should consider the realities of the long-distance market and balance the costs and benefits of any new rules. Any new slamming and cramming rules should be narrowly tailored to address those limited circumstances where there exists an actual risk that a long-distance customer could be victimized by a slamming and cramming scheme.

Respectfully submitted,

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