Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF CALTEL

Pursuant to the Commission's Public Notice establishing dates for comments on the Notice of Proposed Rulemaking (NPRM) issued in this proceeding,[1] the California Association of Competitive Telecommunications Companies[2] ("CALTEL") files the following reply comments on behalf of its members.[3]

I. Introduction and Summary

CALTEL is a non-profit trade association that represents the interests of its members before the California Public Utilities Commission (CPUC), the California State Legislature, and the California Governor's Office. CALTEL participates in Commission proceedings, especially where there is an opportunity and/or need to provide input specific to the communications services market in California.

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[1] *Consumer and Governmental Affairs Bureau Announces Comment Dates for Slamming and Cramming Proceeding*, Public Notice DA 17-773, August 15, 2017.

[2] CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice and broadband services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

[3] *See* www.caltel.org for a list of CALTEL member companies.

CALTEL supports reasonable safeguards to protect consumers from having their service provider switched without their consent and having unauthorized charges placed on their bills, as long as those safeguards are balanced with the goals of promoting competition and protecting consumer choice. CALTEL believes that the safeguards that exist in current Commission rules are reasonable and balanced. These safeguards include 1) requirements that carriers maintain and be able to produce evidence of a consumer's intention to make a carrier change,[4] 2) rules governing how carriers that choose to offer long distance (LD) or local freezes may make them available,[5] 3) limitations placed on inappropriate contacts by existing carriers attempting to influence or impede a consumer's right to choose a new service provider[6] and 4) relevant enforcement mechanisms[7].

But CALTEL strongly opposes the proposals in the NPRM that would 1) make freezes, especially local or all-distance freezes, mandatory for all customers and all service providers and 2) require existing providers to "double check" with customers to confirm their decision to leave. Both of these proposals have the potential to significantly harm competition and competitive choice for all-distance services, especially in light of the lack of a record that a problem exists. The Commission should reject both proposals and identify other solutions that are better tailored to the slamming complaints that it currently receives.

[4] 47 C.F.R. 64.1120 and 64.1130.

[5] 47 C.F.R. 64.1190.

[6] 47 C.F.R. 64.1120 (a)(2).

[7] 47 C.F.R. 64.1140.

II. Discussion

A. Mandatory All-Distance Freezes Would Be Unnecessary, Costly, and Would Pose a Significant Harm to Competition and Competitive Choice

With regards to "slamming," the NPRM quantifies the number of consumer complaints[8] and outlines a number of recent enforcement decisions.[9] As far as CALTEL can discern, none of these complaints and actions deal with allegations that a consumer's local or all-distance service was switched without their knowledge or consent.

The NPRM then leaps to the conclusion that account freezes, which are available on an opt-in basis from those carriers that choose to offer them (mostly large ILECs), should be mandatory for all customers and providers, and be placed on both LD as well as local and/or all-distance services.[10] But nowhere does the NPRM contain any facts or figures comparing the number of complaints to the number of local numbers ported or otherwise transferred each year,[11] or the number of ILEC customers that have chosen to place a freeze on either their LD or local accounts.

CALTEL submits that once these facts are gathered, the record will show that the number of complaints identified in the NPRM (approximately 8,000 in the two-year period 2015-2016) is miniscule (even if significantly understated as the NPRM

[8] NPRM at ¶ 5.

[9] NPRM at ¶¶ 6-9.

[10] NPRM at ¶ 14.

[11] The NPRM, although somewhat belatedly, confirms that such a comparison would be helpful and relevant ("Finally, and fundamentally, we seek comment on the prevalence of incidences of slamming as seen in our enforcement actions versus the number of legitimate carrier changes that occur." NPRM at ¶ 24.

suggests)[12] compared to the number of all-distance service provider changes made each year. For example, Neustar, the current administrator of the Number Portability Administration Center (NPAC), states on its website that it "executes over half a billion registry updates a year to more than 600 million registered phone numbers" and in doing so, "supports freedom of choice for hundreds of millions of consumers and businesses, and for all the carriers that serve them."[13]

Furthermore, based on the experience of CALTEL members, it appears that very few ILEC customers have opted to place a local freeze on their accounts. For example, CALTEL member Sonic Telecom, which has tens of thousands of all-distance customers in California, reports that it has yet to port a customer number that first needed to have a local (or LD) freeze lifted on the account.

To add insult to injury, the NPRM contains a confusing and illogical discussion regarding the need to impose this mandatory requirement on all-distance legacy TDM services, but to exempt CMRS and interconnected VoIP services because they are all-distance services.[14] If this (il)logic were to prevail, then TDM providers would not only

[12] NPRM at ¶ 5, fn 14.

[13] "The Dimensions of Reliability: NPAC Facts" at https://www.neustar.biz/npac?_ga=2.93081113.580191923.1505236837-1618912977.1505236837 .

[14] NPRM at ¶ 14. First, the NPRM concludes that most legacy TDM services are purchased as all-distance services, and therefore should be subject to an all-distance freeze ("A majority of consumers today purchase bundles of services rather than selecting individual services, and we believe most consumers have no reason to distinguish interLATA and intraLATA services. We seek comment on eliminating the service distinctions for these purposes and having carrier freezes apply to all telephone services a consumer has with no need to seek separate authorization." Then, in the very next sentence, the NPRM concludes that since wireless and interconnected VoIP services are purchased as all-distance services, they should be exempt from an all-distance freeze

face significant cost burdens to comply, but would simultaneously be placed at a significant competitive disadvantage vis a vis their interconnected VoIP and wireless competitors.

Furthermore, some CLECs (resellers and customers of ILEC voice platform services such as Local Wholesale Complete and Wholesale Advantage) would be competitively disadvantaged even further if a mandatory freeze were adopted. While the NPRM appears to assume that all local exchange carriers have the technical ability to implement account freezes,[15] that assumption is incorrect. Resellers do not control the number portability or carrier change processes, and only become aware that a customer has made a change when they receive a line loss notification from the wholesale provider. As a result, wholesale providers (including ILECs, cable companies and facilities-based CLECs) would have the ability to implement account freezes that delay or impede the reseller from transferring customers in, but resellers would have no ability to implement the same protections against outgoing transfers.

CALTEL does not believe that the record supports the need to impose adoption of a mandatory "default" freeze on any services. With regard to all-distance services, these services should be exempt from any new requirements on a technology-neutral basis consistent with Commission goals and objectives.

B. "Double Checks" by Existing Carriers Will Introduce Delay and Opportunities for Retention Marketing for Voice Services that

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"We believe consumers purchase CMRS and interconnected VoIP as all distance services and thus a default freeze does not make sense for these services." These statements are contradictory and cannot be reconciled with each other.

[15] NPRM at ¶ 16.

Already Harm Competition and Frustrate Consumers of BIAS and Cable Services

In addition to proposing that all local exchange carriers be required to implement a mandatory freeze on all-distance services, the NPRM also proposes that executing carriers be required to "double check," or confirm, that a consumer wishes to switch providers before processing the change.[16] While CALTEL acknowledges that such a procedure could potentially prevent some incidences of slamming, the potential impacts on competition and consumer choice do not justify the potential benefits.

As the NPRM notes, this proposal risks introducing unnecessary delay and inappropriate "retention marketing" that could discourage many consumers from exercising their rights to choose a service provider and to take their number with them when they do.[17] But the NPRM then concludes that although these concerns were the basis for the Commission's determination to prohibit executing carrier contacts in the past, somehow the level of competition has evolved such that anti-competitive behavior is less likely.[18]

The Commission should reject such a conclusion. Increased competition in communications markets has made retaining existing customers even more important, and retention marketing tactics even more aggressive, than ever before. This is clearly evident with regard to service bundles that include Broadband Internet Access Service (BIAS) or cable television services, for which customers are affirmatively required to

[16] NPRM at ¶¶ 22-29.

[17] NPRM at ¶ 23.

[18] NPRM at ¶¶ 24-25.

contact their existing provider to cancel service. As a result, a number of Internet websites provide consumers with "excuses" that will help them navigate these conversations, and provide warnings about retention marketing tactics:

> The reps will say just about anything to keep you as a customer, and that means an extended, pushy conversation. They may try sending out a technician to 'fix' whatever issue you had, they might offer a one time credit or they could pull out any number of other tricks in an attempt to prevent you from cancelling. But stay strong, because these distractions will only keep you from your ultimate goal.[19]

The recording of a call between a San Francisco technology editor and a Comcast retention marketing representative in 2014 showed just how difficult it was for a savvy customer to successfully cancel his service.[20]

There is no reason to believe that permitting existing providers to perform "double checks" with the customer prior to executing a change would not result in some of the same consumer abuses and tactics for voice service customers. The Commission should not only reject this proposal, but consider how to protect consumers from the aggressive retention marketing practices that currently exist for other communications services.

III. Conclusion

CALTEL welcomes this opportunity to provide reply comments on these important competition-affecting issues. CALTEL strongly opposes the proposals in the

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[19] "How to Cancel Spectrum in 5 Steps," Julian Kurland, May 31, 2017 at https://billfixers.com/blog/how-to-cancel-spectrum .

[20] *See, e.g.*, "Recording of Man's Attempt to Cancel Comcast Will Drive You Insane," Time.com, Laura Stampler, July 15, 2014, at http://time.com/2985964/comcast-cancel-ryan-block/ .

NPRM that would 1) make freezes, especially local or all-distance freezes, mandatory for all customers and all service providers and 2) require existing providers to “double check” with customers to confirm their decision to leave. Both of these proposals are unwarranted based on the current record, would impose significant costs on competitive providers, would potentially place providers of all-distance TDM legacy services at a competitive disadvantage as compared with their interconnected VoIP and wireless competitors, and would potentially expose voice service customers to retention marketing abuses that are worse than the slamming risks they are intending to address. Most importantly, these proposals significantly disrupt the balance between reasonable consumer protections and the need to promote competition and protect consumer choice. The Commission should reject both proposals and identify other solutions that are better tailored to the slamming complaints that it currently receives.

Respectfully submitted,

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