

**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  
THE USTELECOM ASSOCIATION**

The USTelecom Association (USTelecom)<sup>1</sup> is pleased to submit these comments on the Commission’s Notice of Proposed Rulemaking regarding slamming and cramming (*Slamming NPRM*).<sup>2</sup> In the *Slamming NPRM*, the Commission makes several proposals aimed at protecting consumers from slamming and cramming and strengthening the Commission’s ability to take action against bad actors.<sup>3</sup> While the Commission highlights recent instances of slamming and cramming, it also acknowledges that consumers increasingly purchase bundled local and long distance service, and thus the opportunities for slamming and its associated cramming are greatly reduced.<sup>4</sup> As such, USTelecom urges the Commission to carefully balance the potential benefits

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<sup>1</sup> USTelecom is the nation’s leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

<sup>2</sup> *In the Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking and Order, WC Docket No. 17-169, FCC 17-91 (July 13, 2017) (*Slamming NPRM*).

<sup>3</sup> *Slamming NPRM* at 1, para 2.

<sup>4</sup> *Id.* at 6, para 14.

of its proposals (taking into account existing measures taken by carriers to protect their respective consumers from slamming and cramming) against the regulatory burdens it will create if it adopts its proposals.

The Commission should assess the need for its proposed new rules in light of the marketplace – if one still remains – for separate long distance services. Notably, most consumers are purchasing bundled long distance from their local carrier, significantly decreasing the likelihood of slamming or related cramming. Also, consumers continue to adopt VoIP or wireless service (which are “all distance” services), further shrinking the market for separate long distance service. The Commission has identified this market trend for years and it was the basis for the Commission’s forbearance from equal access requirements.<sup>5</sup> Without separate long-distance service, there is no opportunity for a consumer to have their long-distance service switched, thus no slam can occur and consumers are protected. In fact, several USTelecom members have filed discontinuance requests with the Commission for some or all third-party billing of telecommunications services.<sup>6</sup> Further, USTelecom members already have many protections in place including offering to block many types of third-party charges.

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<sup>5</sup> See *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, et al.*, Memorandum Opinion and Order, WC Docket Nos. 14-192, 11-42 and 10-90, 31 FCC Rcd 6157, 6184-85 (Dec. 27, 2015) (“USTelecom Forbearance Order”).

<sup>6</sup> See *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Servs.*, WC Docket No. 16-219, Public Notice, 31 FCC Rcd 7376 (2016).

**I. It is Unnecessary at This Time to Require Certain Third-Party Billing to Be Blocked By Default.**

The Commission has identified that many of its slamming violations also result in unauthorized bill charges on the victim's account, known as cramming.<sup>7</sup> Thus, one of the suggestions in the *Slamming NPRM* is to block certain third-party billing by default as a means of addressing this "slamming-related cramming."<sup>8</sup> Such a blanket step is unnecessary given the rapidly declining market for separate local and long-distance services. As discussed above, many carriers are eliminating third-party billing for some or all services. Thus, a default block on third-party billing for local and long-distance services is not needed.

If, however, the Commission believes that action is necessary in this area, any default blocking should only apply on a going-forward basis to consumers who do not already subscribe to a third-party billing service. Requiring carriers to re-verify consumers' prior third-party billing elections would add substantial costs and create substantial consumer disruption.

**II. Codification of Rules Should Only Apply to Knowing Misrepresentation.**

Another proposal the Commission makes in the *Slamming NPRM* is to codify a ban on misrepresentations and unauthorized charges.<sup>9</sup> The Commission has found that the bulk of slamming stems from sales calls where the caller misrepresents themselves to the called party in an attempt to deceive the consumer.<sup>10</sup> Although the current rules contain detailed verification procedures requiring that carriers not execute changes without authorization,<sup>11</sup> the rules do not

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<sup>7</sup> See *Slamming NPRM* at 7, para 17.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 5, para 12.

<sup>10</sup> *Id.*

<sup>11</sup> See 47 C.F.R. §64.1120.

expressly ban carrier or carrier-agent misrepresentations on sales calls. The Commission is now seeking to formally ban such misrepresentations. USTelecom members support the Commission's efforts to combat bad practices; however, the Commission should make clear that it is targeting only systemic or intentional practices and not isolated occurrences. The Commission should avoid strict liability in its rule and its enforcement actions for isolated mistakes during routine customer care. For this reason, the Commission may be better served by relying on its existing enforcement mechanisms and case-by-case review to combat bad practices.

### **III. Eliminating Mandatory Third-Party Verification Would Promote Cost Savings Without Reducing Consumer Protections.**

Also among the proposals in the *Slamming NPRM* is the proposal to eliminate the third-party verification (TPV) requirement.<sup>12</sup> As previously noted herein, most consumers are purchasing bundled long-distance service from their local carrier and so the likelihood of slamming resulting from the lack of a TPV has all but disappeared since the days when long distance service was primarily purchased separately. As such, the Commission should eliminate TPV where customers are not changing a stand-alone long distance provider, and where carriers are no longer offering separate long-distance service. Where consumers do purchase separate long-distance service, some USTelecom members are already recording the sales calls which, in those instances, makes the TPV requirement duplicative. Eliminating the TPV requirement where it is unnecessary and/or duplicative would assist carriers in cost savings while maintaining necessary consumer protections.

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<sup>12</sup> *Id.* at 12, para 33.

#### **IV. Slamming and Cramming Rules Should Not Apply to VoIP.**

The Commission also should not apply slamming or cramming rules to interconnected VoIP providers.<sup>13</sup> VoIP providers typically offer services on an all-distance basis. Unlike traditional incumbent phone companies, VoIP providers have never been subject to equal access rules requiring the ability for customers to choose separate long distance providers. Because there is no such thing as separate local and long-distance VoIP service, there is no opportunity for a VoIP provider to change a consumer's chosen long distance provider without authorization.

#### **V. Market Changes Should Be Considered Before Adopting Any Rules.**

As the Commission has acknowledged in the *Slamming NPRM*, before adopting any of its proposals the Commission should ensure that any new rules do not create regulatory burdens that outweigh their benefits. Because changes in the market are reducing opportunities for slamming and slamming-related cramming, adding additional regulatory burdens at this stage does not make sense. In any event, the Commission should factor the decline in the market for separate long-distance services into its cost/benefit analysis. USTelecom supports protecting consumers from bad actors, and its members already have adopted numerous consumer protection mechanisms in the areas of slamming and cramming. Any additional requirements should be designed to ensure that the benefit to consumers outweighs the added burden on carriers and customers. USTelecom has often commented that having regulatory requirements simply without a measurable benefit are burdensome and unnecessary.<sup>14</sup>

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<sup>13</sup> See *Slamming NPRM* at 6, para 13.

<sup>14</sup> See, e.g., USTelecom Comments *In the Matter of Modernization of Payphone Compensation Rules, et al.*, WC Docket No. 17-141, CC Docket No. 96-128, WC Docket No. 16-132 (filed Aug. 2, 2017); USTelecom Comments *In the Matter of Rural Call Completion*, WC Docket No. 13-39 (filed Aug. 28, 2017).

## **VI. Conclusion.**

For the reasons discussed herein, as the Commission considers various proposals to combat slamming and/or cramming, it should tread carefully and not adopt rule that would result in minimal additional benefits while placing onerous, prescriptive requirements on the carriers that are not the bad actors in this space. USTelecom and its members whole-heartedly support the Commission's initiative to ensure that its customers are protected from slamming and cramming, but USTelecom asks the Commission to carefully consider the issues addressed herein so that the causes of slamming and cramming are properly addressed and that new rules do not become the source of unnecessary regulations.

Respectfully submitted,

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