Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF AT&T SERVICES, INC.

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I. INTRODUCTION AND SUMMARY

AT&T Services, Inc., on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively "AT&T") hereby submits the following comments in response to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") seeking comment on additional steps to protect consumers from slamming and cramming.[1] AT&T shares the Commission's concerns regarding the actions of unscrupulous companies who engage in these activities, and AT&T applauds the Commission for its aggressive enforcement actions in these areas. These efforts, coupled with continuing changes in how consumers purchase telecommunications services and a marked decline in the availability of third-party billing arrangements, have made a substantial dent in combatting slamming and cramming. This decline in slamming and cramming should continue, if not accelerate, as it is becoming increasingly rare for consumers to purchase stand-alone long distance services, and third-party billing arrangements that have created opportunities for slamming and cramming are being terminated. Given this trend, the best course of action is for the Commission to continue to aggressively pursue unscrupulous carriers who engage in

[1] *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges,* Notice of Proposed Rulemaking, FCC 17-91 (2017) ("*NPRM*").

slamming and/or cramming, while monitoring the marketplace to ensure that the decline in these fraudulent practices continues. Adopting prophylactic rules on top of those actions at this point would be unnecessary and unwise because those rules have the potential to raise the cost of service or impede consumer choice and competition.

II. SLAMMING AND CRAMMING ARE DECLINING, AND THIS TREND WILL CONTINUE

While AT&T strongly condemns slamming and cramming, the Commission is correct to observe that the costs of any regulatory prescription must not exceed the benefits.[2] Of particular relevance to that analysis is evidence that the incidence of slamming and cramming are on the decline. This trend, which is likely to continue, can be explained by a number of factors. First, as detailed in the *NPRM*, the Commission has aggressively used its enforcement authority to punish those engaged in slamming and cramming. Those who would engage in these fraudulent activities are thus on notice that they will be severely punished when caught, and widespread slamming and cramming is unlikely to escape detection. No less important, fundamental shifts in the marketplace are eliminating opportunities for slamming and cramming (including "slamming-related cramming").[3]

Slamming traditionally occurred when a consumer's long distance carrier was changed without proper authorization. But consumers today rarely purchase long-distance service separate and apart from local service. Indeed, wireless and VoIP providers do not even offer consumers the option of purchasing stand-alone long-distance service, and customers are

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2 *NPRM* at ¶ 10.

3 *NPRM* at ¶ 18 (indicating that the Commission's proposed cramming rules center around third-party charges for local and long-distance service, as these are "a frequent source of slamming-related cramming").

increasingly adopting wireless and/or VoIP as their telephone service of choice. In the second half of 2016, more than 50 percent of all U.S. households did not have a landline telephone,[4] a number that has been consistently climbing for the past several years.[5] According to the Commission, in June 2016 there were 62 million end-user switched access lines in service, 60 million interconnected VoIP subscriptions, and 338 million mobile subscriptions in the United States.[6] And the adoption of switched access lines continues to decline relative to wireless and interconnected VoIP service. The Commission reported that over the past three years, interconnected VoIP subscriptions increased at a compound annual growth rate of 10 percent, mobile voice subscriptions increased at a compound annual growth rate of 3 percent, and retail switched access lines *declined* at 11 percent per year.[7] There is no reason to believe that these trends will reverse. In other words, the problem the Commission seeks to address is becoming smaller and smaller as a result of natural market forces, and does not justify the major regulatory overhauls suggested in the *NPRM*.

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4 National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2016*, at 2 (May 2017), *available at* https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf (finding that 50.8 percent of all households did not have a landline telephone in the second 6 months of 2016).

5 CTIA – Wireless Snapshot 2017, *at* https://www.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf (last visited September 12, 2017) (noting the growth in wireless-only households from 10.5 percent in 2006, to 31.6 percent in 2011, to 50.8 percent in 2016).

6 Federal Communications Commission Industry Analysis and Technology Division – Wireline Competition Bureau, *Voice Telephone Services: Status as of June 30, 2016*, at 2 (April 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf.

7 *Id.*

Even before the general decline in traditional landline telephone service, consumers were increasingly purchasing bundled telephone service where long distance is not a separate charge, thus eliminating the opportunity for a change in long distance carrier. The Commission has noted this trend, repeatedly concluding that stand-alone long distance has become a "fringe market."[8] Indeed, the Commission has used this fact to justify waiving or eliminating regulations related to stand-alone long distance service.[9] By the Commission's own admission, it is this "fringe market" that lies at the heart of the proposals advanced in the *NPRM.*[10] This is not to suggest that those who continue to use traditional landline telephone service should not be protected from bad actors—the Commission is absolutely correct to continue to do so, as these consumers are indeed likely to be among the most vulnerable to such slam and cram schemes. The decline in slam and cram activity, however, is relevant to the cost/benefit analysis that

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8 *See, e.g., 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,* Memorandum Opinion and Order, 31 FCC Rcd 6157, 6185 ¶ 49 (2015) ("Almost a decade ago, the Commission identified stand-alone long-distance as a 'fringe' market for mass market services. The record reflects that the trend toward all-distance voice services has continued since that time.").

9 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities,* Order, 31 FCC Rcd 9511, 9515, ¶¶ 10-11 (2016) ("Now that stand-alone long distance has become a fringe market, it would appear that, for traditional TRS, STS, and CTS as well as for iTRS, when a TRS provider does not charge users for long distance service, there is no public interest reason for continuing to require the TRS provider to offer its users the ability to use an alternative long distance carrier. In addition, we are persuaded by Sprint's concern that the requirement imposes an unnecessary burden because it compels TRS providers to expend resources to maintain and replicate obsolete equal access capabilities at a time when they are updating their TRS platforms to incorporate more modern telecommunications.").

10 Aside from the Commission's proposal to codify a general rule against cramming, all of the proposals in the *NPRM* center around unauthorized changes to a consumer's local or long distance carrier.

should be considered (and which the Commission has acknowledged is an important consideration)[11] before the Commission decides to further regulate activities that already are unlawful.

Meanwhile, in addition to the reduction in the number of consumers likely to be vulnerable to slam and cram schemes, local exchange carriers – including AT&T – are sharply curtailing third party billing. AT&T, for example, now provides third-party billing only to a handful of interexchange carriers and for two providers of yellow pages service (one of which AT&T is required to offer billing to under state law). Although the overwhelming majority of providers that utilize third-party billing – including those for which AT&T continues to bill – are legitimate businesses that do not engage in cramming or slamming, the Commission has recognized that third-party billing platforms can be a vehicle for such practices. Indeed, one of the proposals in the *NPRM* is to presumptively block third-party billing for that very reason. The sharp reduction in the incidence of third-party billing, without any such regulatory mandate, has already reduced slamming and cramming and will continue to do so going forward.

Given that aggressive Commission enforcement, coupled with marketplace changes, are substantially reducing the incidence of slamming and cramming, it is by no means clear that additional rules are warranted at this time. As discussed below, many of the proposals in the *NPRM* would require expensive changes to IT systems, retooling of long-established processes, and retraining of employees – while encumbering the process of switching providers – to the potential detriment of consumers and competition. Other proposals, such as codifying rules against misrepresentation on sales calls or against slamming and cramming, are either seriously

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11 *NPRM* at ¶ 10.

overbroad or would seem to offer no benefit at all. Thus in lieu of adopting prescriptive rules at this time, AT&T recommends that the Commission continue to aggressively police slamming and cramming, while monitoring the marketplace to ensure that the trend towards fewer and fewer slamming and cramming complaints continues.

III. TARGETED ENFORCEMENT, NOT BURDENSOME REGULATION, IS THE PROPER VEHICLE TO ADDRESS SLAMMING AND CRAMMING COMPLAINTS

In the *NPRM*, the Commission has offered a variety of proposals aimed at curtailing slamming and slamming-related cramming by augmenting its existing authority to take enforcement action against such practices. AT&T addresses these proposals in turn.

Misrepresentations on Sales Calls. The Commission has proposed a ban on misrepresentations on sales calls, asserting that such a rule could prevent slamming as misrepresentations typically precede a slam.[12] AT&T does not oppose a prohibition on misrepresentations as a matter of principle, but the rule as proposed in the *NPRM* is too nebulous and overbroad. For one thing, the *NPRM* makes no effort to define what constitutes a "misrepresentation" for purposes of this rule. For example, it's not clear whether the rule, as proposed, would apply to any statement during a sales call that turns out not to be true – including one that has nothing to do with slamming or cramming concerns. It is also not clear whether the rule would apply to statements that are not actually inaccurate but which are susceptible to two meanings and are misconstrued by a consumer. In addition, the *NPRM* likewise fails to address whether an inadvertent mistake would constitute a violation of this rule. Beyond that, the *NPRM* does not elaborate on what constitutes a "sales call" for purposes of this

12 *NPRM* at ¶ 12.

rule, or otherwise amplify which interactions between a consumer and a carrier would be covered.

The multitude of issues raised by this proposed rule underscores that misrepresentation is likely best addressed through the Commission's existing enforcement authority. The Commission already has used its statutory authority to punish misrepresentations made for the purpose of fraudulent inducement in the context of slam and cram schemes, and there is no reason it cannot continue to do so.[13] Moreover, by relying on case-by-case enforcement, the Commission can consider case-specific issues – such as intent and reliance – to separate those statements that should be sanctioned as fraud from those that do not result in any slam, cram, or harmful deception, or that lack the requisite level of intent. One-size-fits-all rules are not likely to give the same flexibility. To be sure, if rules were necessary to reach harmful misrepresentations, there might be reason to adopt these rules. But that does not appear to be the case here. For these reasons, AT&T believes that the Commission's objectives are best served by continued reliance on its existing authority under Section 201 and, where applicable, Section 258. By doing so, the Commission could take into account all relevant circumstances to determine whether, on balance and in context and effect, a communication should be deemed unlawful. If, however, the Commission does adopt a rule prohibiting misrepresentations on sales calls, such a rule should be narrowly-tailored to target material, intentional misrepresentations that harm consumers, and the Commission must also define with specificity what constitutes a sales call. The Commission can always look to its statutory authority if a narrowly tailored rule

[13] *See, e.g., NPRM* at ¶ 12 (noting that the "Commission has previously held that misrepresentations on sales calls are an unjust and unreasonable practice and unlawful under Section 201(b) of the Act," citing recent forfeiture orders).

fails to cover unreasonable practices within the Commission's jurisdiction that should be sanctioned.

Codifying a Rule Against Cramming. AT&T does not object to a rule that codifies a prohibition against cramming, but AT&T sees little, if any, benefit to it. The Commission states that its intent is to "codify … the existing prohibition,"[14] and it posits that an explicit rule against cramming would serve as a deterrent and provide greater clarity to carriers. But those engaged in cramming should be well aware, given the Commission's aggressive enforcement actions, that cramming is illegal. Codifying existing law in a rule is not likely to educate or deter. Thus while AT&T sees little downside to a properly crafted rule that defines and prohibits cramming, it also sees little, if any, value to it.

Preferred Carrier Freezes and Mandatory Double-Checks. The Commission has proposed two requirements that would insert an extra step into the process of changing long-distance carriers: making preferred carrier freezes the default, and requiring carriers to "double-check" a switch with any consumer who requests one.[15] Each of these requirements would, in all likelihood, have the primary impact of making it more difficult for those consumers who wish to switch carriers to do so. In both cases, additional steps would be necessary before a consumer would be able to effectuate a change in their service provider.[16] These proposals also have the potential to create confusion – few of AT&T's consumers take advantage of the opportunity

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14 *Id.* at ¶ 13.

15 *Id.* at ¶¶ 14-16, 22-29.

16 In the event of a default freeze, presumably the consumer would be required to contact their carrier and ask to have the freeze lifted if they wished to change providers. In the "double-check" scenario, the consumer would need to be available to receive and verify the double-check request.

AT&T provides to select a preferred carrier freeze. A default freeze could confuse consumers who may not understand why such a change to their account is necessary. And finally, the implementation costs for either of these proposals would be significant – AT&T has estimated that the necessary IT changes alone would cost several million dollars. Consumer education campaigns and re-training of personnel would also be required, imposing substantial additional costs.

Blocking Certain Third-Party Billing by Default. The Commission has suggested that by blocking third-party billing for local and long distance service by default, it would further protect consumers from the effects of slamming.[17] However, third-party billing for local and long distance service is so limited today that additional regulation in this area would run afoul of the Commission's stated objective of "balanc[ing] the benefits of the proposals in this Notice against the burden they may place on legitimate carrier changes and third-party charges."[18] AT&T, like other carriers, has dramatically scaled back its third-party billing. AT&T derives little revenue from third-party billing, and believes that carriers may prefer to exit that business altogether rather than bear the costs of complying with default blocking of certain third-party charges. If the Commission does adopt a default block of third-party billing for local and long distance service, the effective date of any rule should be delayed such that those carriers who would prefer to cease third-party billing entirely have the opportunity to do so.

In addition, the Commission should assist those carriers who would prefer to cease third-party billing, by preempting any state-level requirements that may require carriers to perform

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17 *NPRM* at ¶¶ 17-18.

18 *Id.* at ¶ 10.

such billing (including statutes, rules, orders, and tariffs). Currently, AT&T has billing and collection tariffs on file in three states: California, Missouri and Texas. If AT&T terminates its third-party billing and collection service entirely, it will need to withdraw those tariffs, and the Commission should make clear that carriers should not be forced to provide billing and collection service to unaffiliated third parties if they does not wish to do so.

Recording Sales Calls. The *NPRM* also seeks comment on a requirement that carriers record all sales calls. The Commission posits that such a requirement would deter misrepresentation and aid enforcement if misrepresentation does occur.[19] AT&T is skeptical that the rule would offer such benefits. As the Commission itself observed in the *NPRM*, OneLink edited consumer statements to create fake third-party verifications.[20] Recordings of sales calls could be similarly altered by those engaged in systematic fraud.

That is not to say that recordings have no value. AT&T records many, if not most, of its consumer sales calls, and it uses those recordings for monitoring and training purposes. But if a customer calls AT&T to complain that she received an unauthorized charge on her bill, AT&T generally credits the charge without reviewing a recording of the transaction to determine if the complaint has merit. A requirement that all sales calls be recorded would thus offer limited consumer benefit. At the same time, such a requirement would impose considerable costs. Carriers would not only have to arrange for the recording of all calls that are, or might turn into, sales calls, but renegotiate contracts with vendors to require them to do the same. Vendors, in turn, would have to acquire capabilities they don't have to record and store recordings of sales

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19 *Id.* at ¶ 30.

20 *Id.* at ¶ 6.

calls. And requiring that such recordings be retained for two years, as suggested in the *NPRM*, or some other lengthy time period, would impose very substantial costs for building and maintaining massive amounts of storage capacity. AT&T also notes the potential for this requirement to conflict with state laws and/or rules governing the recording of telephone calls. For all these reasons, the Commission should not require the recording of all sales calls, but if it does, it should limit the requirement to those sales calls (if any) that pose the greatest risk of slamming or cramming – for example, outbound telemarketing calls.[21] And it should limit the retention period for such recording to the lesser of 45 days or such period as may be permitted under state law.

IV. THERE IS NO BASIS FOR EXTENDING SLAMMING AND CRAMMING RULES TO WIRELESS OR INTERCONNECTED VOIP SERVICES

Although the *NPRM* and its associated proposals center around traditional landline telephone service, the Commission asks whether any of the rules adopted in this proceeding should be extended to wireless and/or interconnected VoIP service. They should not. Both wireless and wireline VoIP services are sold exclusively as "all distance" services, without a separate long-distance component. And none of the major wireless carriers offers third party billing for information services. Consequently, as the Commission observes, the opportunities for slamming and cramming in the context of wireless and interconnected VoIP are minimal.[22]

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[21] Of course, if a carrier voluntarily records sales calls, such recordings may be used as evidence in the event of a slamming or cramming complaint.

[22] *See, e.g., NPRM* at ¶ 14 ("We believe consumers purchase CMRS and interconnected VoIP as all distance services and thus a default freeze does not make sense for those services."); *NPRM* at ¶ 18 ("We note that the vast majority of complaints and enforcement actions appear to target the billing practices of traditional local exchange carriers, not wireless carriers or interconnected VoIP providers. Is that because wireless carriers and interconnected VoIP

That being the case, any benefits of extending the proposed rules to wireless or VoIP services would be far outweighed by the costs.

V. CONCLUSION

For the reasons articulated above, the Commission should continue to use its enforcement authority to police the fraudulent actions of unscrupulous companies who seek to defraud wireline consumers through slamming and cramming. However, in light of the fact that slamming (and its associated cramming) is declining, the Commission should not adopt overly broad regulations that would produce few additional benefits while substantially burdening those carriers who already take positive action to protect their subscribers. Nor should the Commission extend these rules to industries such as wireless and VoIP where slamming is not a problem.

Respectfully Submitted,

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providers generally offer local and long-distance services as a bundle or for some other reason?").