**Before the**

Federal Communications Commission

Washington, D.C. 20554

In the Matter of )

)

Protecting Consumers from ) CG Docket No. 17-169

Unauthorized Carrier Changes and )

Related Unauthorized Charges )

**LATE-FILED COMMENTS OF**

**THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES\***

The National Association of State Utility Consumer Advocates (“NASUCA”)[[1]](#footnote-1) submits the following comments in response to the Notice of Proposed Rulemaking released July 14, 2017, FCC 17-91 (“Order”).[[2]](#footnote-2)

NASUCA supports proposed new section 64.2401(g). NASUCA has long urged the Commission to adopt a rule expressly prohibiting cramming—as shown in multiple sets comments filed in CG Docket No. 11-116, most recently on December 16, 2013. NASUCA has likewise urged the states to take action prohibiting cramming.[[3]](#footnote-3) NASUCA agrees that codifying the cramming prohibition for wireline and wireless carriers would act as a deterrent, provide further clarity and aid in enforcement.[[4]](#footnote-4)

The cramming prohibition should extend to all providers of voice communications, regardless of technology, including wireless and interconnected VoIP.[[5]](#footnote-5) NASUCA can conceive of no legitimate reason for any provider to object, particularly when such platform neutrality would also create a “level playing field” for compliance among all providers of voice communications. Simply enough, if a provider does not bill unauthorized charges, it has nothing to fear. The cramming problem has cost American consumers billions of dollars[[6]](#footnote-6) and has persisted for a quarter of a century. A substantial portion of its history has arisen in conjunction with the bills of wireless providers.[[7]](#footnote-7)

Because the market is shifting markedly to wireless and VoIP technologies, exempting wireless and VoIP providers from consumer protections adopted now would ensure that the protections are partial and temporary, rather than comprehensive and lasting. Technologies are always changing, in this industry and in others. But a technology change should not provide an escape from the rules protecting the public. For example, the operators of electric motor vehicles must obey the same traffic laws as the operators of gas-powered vehicles. A technology-neutral prohibition is the forward-looking solution.

NASUCA also supports proposed new paragraph 64.1120(a)(1)(i)(A). In NASUCA’s experience, misrepresentations on a sales calls—including misrepresentations of the identity of the caller—are a long-standing source of legitimate complaints. An explicit provision that such deceptions vitiate any authorization for a carrier change is fully justified. NASUCA suggests adding the word “material” between “any” and “misrepresentation.” A statement should be regarded as material if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding” a product or service. *FTC v. Cyberspace.Com*, 453 F.3d 1196 (9th Cir. 2006).

The Commission should make clear that its rules do not preempt state efforts to address slamming and cramming.

NASUCA appreciates this opportunity to submit these comments and asks that the Commission give them due consideration.

September 25, 2017 Respectfully submitted,

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1. \* These comments were prepared for filing on September 13, 2017, but through inadvertent error were not filed at that time.

   NASUCA is a voluntary association of 44 consumer advocate offices in 41 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office).  NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues. [↑](#footnote-ref-1)
2. Notice was published in the *Federal Register* on August 14, 2017, vol. 82, no. 155, p. 37830.

   [↑](#footnote-ref-2)
3. See NASUCA resolution 2013-01, ‘Urging State Legislatures to Prohibit the ‘Cramming’ of Unauthorized Charges onto Consumer Telephone Bills and Proposing a Statute to Solve the Problem.” [↑](#footnote-ref-3)
4. Order, ¶ 13. [↑](#footnote-ref-4)
5. See *Id*. [↑](#footnote-ref-5)
6. See generally S. Hrg. 112-171, “Unauthorized Charges on Telephone Bills: Why Crammers Win and Consumers Lose,” Hearing before the Committee on Commerce, Science and Transportation, United States Senate, 112th Cong., 1st Sess. (July 13, 2011). [↑](#footnote-ref-6)
7. See FCC Press Release, May 12, 2015, “Verizon & Sprint to Pay $158 Million to Settle Mobile Cramming Investigations”; FCC Press Release, Dec. 19, 2014, “T-Mobile to Pay $90 Million to Settle Investigation into Mobile Cramming and Truth-in-Billing Practices”; FTC Press Release, Oct. 8, 2014, “AT&T to Pay $80 Million to FTC for Consumer Refunds in Mobile Cramming Case; Refunds Part of Combined $105 Million Settlement with FTC, FCC and States.”

   [↑](#footnote-ref-7)