

## **FCC FACT SHEET**\*

### **Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges** Order - CG Docket No. 17-169

**Background:** Slamming—the unauthorized change of a consumer’s preferred telecommunications provider—and cramming—the placement of unauthorized charges on a consumer’s telephone bill—are longstanding and continuing problems for consumers. Unscrupulous carriers target vulnerable populations by committing fraud either on sales calls or when “verifying” a consumer switch. Some misrepresent who they are or fabricate the consumer’s verification of a switch without actually contacting the consumer. Others go so far as to ask consumers to answer questions on an unrelated call and then splice the consumer’s answers into the alleged verification. And some do not even bother to submit a carrier change but simply cram charges on the consumer’s telephone bill for services that were never authorized. Because the FCC’s rules have not kept pace with these bad actors, the *Report and Order* would amend those rules to further curtail slamming and cramming.

#### **What the *Report and Order* Would Do:**

- Codify a rule prohibiting material misrepresentations on carrier telemarketing calls to consumers that often precede a carrier switch.
- Codify a rule against cramming.
- Improve the efficiency of the existing third-party verification process by eliminating the requirement that a carrier must obtain the authorization of a consumer for each service sold when selling more than one type of service.
- Suspend carriers from using the third-party verification process for two years when they are found to have abused that process.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in CG Docket No. 17-169, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR § 1.1200 *et seq.*

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

REPORT AND ORDER\*

Adopted: [ ]

Released: [ ]

By the Commission:

I. INTRODUCTION

1. For two decades, the Commission has by rule and enforcement protected American consumers from unscrupulous carriers who change their voice service providers without permission ("slamming") or bill them for bogus charges ("cramming").

2. Today, we amend our rules to reinforce the Commission's ability to take action against slammers and crammers and to deter carriers from slamming and cramming in the first place. Specifically, we codify a ban on deceptive marketing tactics for voice services and unauthorized charges on telephone bills, and we improve the effectiveness of the existing third-party verification (TPV) process.

II. BACKGROUND

A. Slamming Rules

3. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."

\* This document has been circulated for tentative consideration by the Commission at its June 2018 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available.

1 47 U.S.C. § 258(a) (codifying Telecommunications Act of 1996, Pub. L. No. 104-104, §101(a), 110 Stat. 56, 77).

2 See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1510, para. 1 (1998) (Second Report and Order), stayed in part, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. May 18, 1999), motion to dissolve stay granted, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. June 27, 2000). VoIP providers

(continued...)

4. The rules specify four forms of possible evidence: a Letter of Agency (LOA), an electronic authorization (a call to a toll-free number that records the caller's originating automatic number identification), "[a]ny State-enacted verification procedures applicable to intrastate preferred carrier change orders only," and, most relevant herein, a third-party verification (TPV), which is a recorded conversation between an independent third-party verifier and the consumer.<sup>4</sup> The rules also require certain disclosures for TPVs, among other requirements.<sup>5</sup> To further protect consumers from slamming, consumers may freeze their choice of carriers.<sup>6</sup>

#### **B. Truth-in-Billing Rules and Section 201(b)**

5. In 1999, the Commission adopted rules under Sections 201(b) and 258 of the Act to alleviate consumer confusion about their telecommunications bills and to deter slamming and cramming.<sup>7</sup> The "truth-in-billing" rules apply to traditional landline voice service and with some limited exceptions to Commercial Mobile Radio Service (CMRS).<sup>8</sup> They require that consumers' bills, among other things, be clearly organized, clearly identify the service provider, highlight any new provider (*i.e.*, one that did not bill the consumer for service during the last billing cycle), and contain full and non-misleading descriptions of charges.<sup>9</sup>

6. In 2012, the Commission required that traditional landline carriers that offer consumers the ability to block third-party charges—a frequent source of crammed charges—clearly and conspicuously notify consumers of that option at the point of sale, on their website, and on each bill.<sup>10</sup> The truth-in-billing rules regulate the format and content of information about third-party charges on consumers' bills but do not explicitly address the imposition of unauthorized charges on consumers'

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and Commercial Mobile Radio Service providers are not subject to the slamming verification rules. *See* 47 CFR § 64.1120(a)(3). Changes in preferred telecommunications service providers involve "submitting" and "executing" carriers. A submitting carrier is "any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber." An executing carrier is "any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed." *See* 47 CFR § 64.1100(a)-(b). For purposes of this *Order*, we use the terms "consumer" and "subscriber" interchangeably.

<sup>3</sup> *Id.* § 64.1120(c). The Commission has rules for calculating slamming carrier liability. 47 CFR § 64.1140(a).

<sup>4</sup> *Id.* § 64.1120(c).

<sup>5</sup> *Id.* § 64.1120(c)(3). For example, TPVs must elicit from the consumer that he or she is authorized to make a carrier switch and must be conducted in the same language as the preceding sales call. 47 CFR § 64.1120(c)(3)(iii), (iv).

<sup>6</sup> *Id.* § 64.1190.

<sup>7</sup> *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 at 7503, para. 21 (1999) (*First Truth-in-Billing Order*).

<sup>8</sup> *See* 47 CFR §§ 64.2400-01.

<sup>9</sup> *Id.* § 64.2401.

<sup>10</sup> *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436 (2012), Erratum (rel. June 7, 2012) (*April 2012 Order*); *see also* 47 CFR § 64.2401(f).

telephone bills.<sup>11</sup> The Commission has, however, repeatedly found that both wireline and wireless cramming is an “unjust and unreasonable” practice in violation of Section 201(b) of the Act.<sup>12</sup>

### C. The Continuing Problem

7. Slamming and cramming historically have been a problem for consumers who buy long-distance service separately from local service. Thanks to the rise of all-distance service and our efforts to combat slamming, the practice has abated somewhat. For example, slamming complaint numbers filed with the Commission in the years 2015-17 were 419, 395, and 312, respectively.<sup>13</sup> Cramming complaint numbers for the same years were 4,080, 3,001, and 2,406, respectively. Nevertheless, slamming, as well as cramming, continues to be a significant concern for consumers. Slamming and cramming cause consumers myriad problems—it deprives them of their choice of providers, can increase their monthly bills, and can be difficult to fix.

8. The Commission’s Enforcement Bureau has brought numerous actions against carriers for slamming and cramming violations.<sup>14</sup> In these proceedings, the Commission found that the perpetrators committed (or apparently committed) several violations, including misrepresenting who they are and why they are calling, fraudulently verifying carrier changes, and cramming long-distance charges

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<sup>11</sup> See, e.g., 47 CFR § 64.2400(a) (“[t]he purpose of these rules is to reduce slamming and cramming and other telecommunications fraud by setting the standards for bills for telecommunications services”).

<sup>12</sup> 47 U.S.C. § 201(b). See, e.g., *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (finding that the company’s practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services); see also *Central Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10399, para. 15 (2016) (*Central Forfeiture Order*); *U.S. Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10413, 10419-20, para. 15 (2016) (*USTLD Forfeiture Order*); *Consumer Telcom, Inc.*, Forfeiture Order, 31 FCC Rcd 10435, 10441-42, para. 15 (2016) (*CTI Forfeiture Order*); *Cellco Partnership D/B/A Verizon Wireless Unauthorized Third-Party Billing Charges*, Order, 30 FCC Rcd 4590 (2015) (resolving allegations that Verizon charged subscribers for products and services that they did not authorize).

<sup>13</sup> Notably, the Commission’s rules allow states to administer our slamming rules. See 47 CFR § 64.1110. Consumers in those states that have elected to administer the slamming rules must file their slamming complaints with their State public utility commissions. As a result, the Commission handles slamming complaints for only 15 states. In addition, many consumers who believe they have been slammed first contact their carrier, and as a result their concerns are resolved before they filed a complaint with a regulatory agency.

<sup>14</sup> Recent slamming and related cramming actions include *OneLink Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403 (2016) (*OneLink NAL*); *Roman LD, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 3433 (2015); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711(2015) (*Preferred Forfeiture Order*); *Long Distance Consolidated Billing Company*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664 (2015); *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056 (2014) (*Optic NAL*), Forfeiture Order, 30 FCC Rcd 2539 (2015) (*Optic Forfeiture Order*); *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522 (2015) (*GPSPS NAL*), Forfeiture Order, 30 FCC Rcd 7814 (2015) (*GPSPS Forfeiture Order*); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014) (*Central NAL*), *Central Forfeiture Order*, 31 FCC Rcd 10392 (2016); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014) (*USTLD NAL*), *USTLD Forfeiture Order*, 31 FCC Rcd 10413 (2016); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843 (2013) (*Advantage NAL*), *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723 (2017) (*Advantage Forfeiture Order*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (*CTI NAL*), *CTI Forfeiture Order*, 31 FCC Rcd 10435 (2016); *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499 (2012); *Silv Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010).

onto consumers' bills.<sup>15</sup> In the *OneLink NAL*, a Commission investigation found that sales agents for four carriers (operating as a single enterprise) apparently told consumers they were calling about a package delivery in an effort to record the consumers' voices,<sup>16</sup> and apparently targeted non-English speakers.<sup>17</sup> The carriers then apparently edited the recordings of consumer statements to produce fake TPVs.<sup>18</sup> For example, one complainant received a call from someone claiming to be from the post office and had a package on hold but needed the complainant's birth date. The complainant gave them a fake date that was later used in the fabricated TPV.<sup>19</sup> Another complainant indicated that her elderly mother answered questions on the phone about a purportedly undelivered postal service package and that her responses were used in an agreement to switch carriers.<sup>20</sup>

9. In the *Preferred Forfeiture Order*, the Commission found that Preferred's telemarketers misrepresented who they were and why they were calling. Complainants described the misrepresentations made by the sales representatives, who asserted that they were the billing agent for AT&T or that they were partnered with AT&T.<sup>21</sup> Another complainant said the sales representative stated that Preferred was a sub-division of AT&T and that the verifier would say it was a separate company and not affiliated with AT&T because it was a sub-division, falsely explaining that this was a technicality required by the FCC.<sup>22</sup>

10. Slammers, or would-be slammers, have also crammed consumers as part of their fraud schemes. In the *Advantage Forfeiture Order*, the Commission found the company misrepresented the true purpose of its sales calls by representing that the call was from the consumer's current carrier.<sup>23</sup> One complainant explained that she received a call from an Advantage representative who told her it was a courtesy call because Advantage was taking over her current company's long-distance service. The representative went on to coach the complainant to say "yes" to all of the TPV questions.<sup>24</sup> If the company's attempted slam was thwarted by a preferred carrier freeze, it nonetheless crammed consumers by billing them a recurring charge for its long-distance "services" (which were never used by the consumer).<sup>25</sup> Consumers stated that the misrepresentations occurred on the sales call and thus were not reflected in the recorded TPVs.<sup>26</sup>

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<sup>15</sup> The Commission has ruled that carriers are responsible for the conduct of third parties acting on the carrier's behalf, including third party marketers. *See, e.g., Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000); 47 U.S.C. § 217.

<sup>16</sup> *OneLink NAL*, 31 FCC Rcd at 1403, paras. 2-3.

<sup>17</sup> *See id.*, Appendix, 31 FCC Rcd at 1432-34. Other cases reveal similar apparent targeting. *See, e.g., GPSPS NAL*, Appendix, 30 FCC Rcd at 2536-38; *Optic NAL*, Appendix, 29 FCC Rcd at 9068-69.

<sup>18</sup> *One Link NAL*, 31 FCC Rcd at 1407, n.22. Carriers have used forged TPVs in other cases. *See, e.g., GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 1; *Optic Forfeiture Order*, 30 FCC Rcd at 2539, para. 1.

<sup>19</sup> *OneLink NAL*, 31 FCC Rcd at 1409, para. 11.

<sup>20</sup> *Id.* at 1410, para. 11.

<sup>21</sup> *Preferred Forfeiture Order*, 30 FCC Rcd at 13720, para. 18.

<sup>22</sup> *Id.* at 13721, para.19.

<sup>23</sup> *Advantage Forfeiture Order*, 32 FCC Rcd at 3723-28, paras. 7-13. Consumers stated that the recordings of the third-party verifications did not contain the misrepresentations that were conveyed on the sales call. *Advantage NAL*, 28 FCC Rcd at 6847-49, paras. 11-15.

<sup>24</sup> *Advantage Forfeiture Order*, 32 FCC Rcd at 3727-28, para. 12.

<sup>25</sup> *Id.* at 3728, para. 15.

<sup>26</sup> *Advantage NAL*, 28 FCC Rcd at 6847-48, paras. 11-15.

11. The *Central Forfeiture Order* describes combined slamming and cramming by a telecommunications reseller. After the complainants discovered they had been slammed and returned to their original carriers, the reseller continued to bill them for monthly long-distance service and other fees and taxes—either on their local exchange carrier bills or on bills sent to them directly by the crammer.<sup>27</sup> One complainant explained that after her grandmother, who did not use long-distance service, died and her phone was disconnected, Central continued to bill her for its “service” for several months.<sup>28</sup>

12. In one Commission enforcement action, a carrier found to have engaged in slamming and misrepresentation argued, unsuccessfully, that it could not be held liable under Section 201(b) for deceptive marketing in the absence of a rule or regulation specifically prohibiting the conduct at issue.<sup>29</sup> In other enforcement actions, carriers have erroneously maintained that a “compliant” TPV recording proves that the consumer understood they were making a carrier change regardless of what a telemarketer may have told the consumer prior to the TPV.<sup>30</sup>

#### **D. Notice of Proposed Rulemaking**

13. In 2017, the Commission released a Notice of Proposed Rulemaking (NPRM) proposing two rules and seeking comment on other measures to protect consumers from slamming and cramming.<sup>31</sup> Specifically, the Commission proposed to codify, pursuant to Sections 258 and 201(b), a new Section 64.1120(a)(1)(i)(A) banning misrepresentations on sales calls and stating that any misrepresentation or deception invalidates any subsequent verification of a carrier change; and proposed to codify in a new Section 64.2401(g) the existing prohibition against unauthorized charges on telephone bills that the Commission has enforced under Section 201(b) of the Act.<sup>32</sup> In addition, the Commission sought comment on further measures to protect consumers from slamming and cramming, including: preferred carrier freezes by default,<sup>33</sup> blocking third-party charges for local and long-distance service by default,<sup>34</sup> requiring verification of the carrier change by the executing carrier,<sup>35</sup> requiring submitting carriers that rely on TPVs to record sales calls,<sup>36</sup> and eliminating or improving TPVs.<sup>37</sup>

14. In general, commenters support the adoption of the two proposed rules, noting that they are consistent with the Commission’s statutory authority under Sections 201 and 258 and prior enforcement actions.<sup>38</sup> These commenters note that codifying such prohibitions in the Commission’s

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<sup>27</sup> *Central Forfeiture Order*, 31 FCC Rcd at 10400, para. 18.

<sup>28</sup> *Id.* at 10393, para. 2.

<sup>29</sup> See *Preferred Forfeiture Order*, 30 FCC Rcd at 13715, paras. 10-11 (refuting carrier’s argument in its response to a Notice of Apparent Liability for Forfeiture that the Commission “cannot enforce Section 201(b) generally, or enforce it with respect to advertising specifically, without first adopting rules”).

<sup>30</sup> See *Central Forfeiture Order*, 31 FCC Rcd at 10396-98, paras. 10-13; *USTLD Forfeiture Order*, 31 FCC Rcd at 10417-19, paras. 10-13; *CTI Forfeiture Order*, 31 FCC Rcd at 10439-41, paras. 10-13.

<sup>31</sup> See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Notice of Proposed Rulemaking, 32 FCC Rcd 6022 (2017) (*Slamming and Cramming NPRM*).

<sup>32</sup> *Id.* at 6026-27, paras. 12-13.

<sup>33</sup> *Id.* at 6027-28, paras. 14-16.

<sup>34</sup> *Id.* at 6028-30, paras. 17-21.

<sup>35</sup> *Id.* at 6030-32, paras. 22-29.

<sup>36</sup> *Id.* at 6032-33, paras. 30-32.

<sup>37</sup> *Id.* at 6033-34, paras. 33-35.

<sup>38</sup> See, e.g., Consumers Union Comment at 4; NTCA Comments at 2-3; John Shaw Comments at 3; WTA Comments at 2; Arizona Commission Reply Comments at 2-3; NASUCA Reply Comments at 1-3.

rules will provide additional clarity and potentially aid in enforcement efforts.<sup>39</sup> Industry commenters, however, oppose any measures beyond those proposed rules, suggesting that they are unnecessary, anti-competitive, and burdensome, and would harm consumers by causing delay in processing legitimate switching requests.<sup>40</sup>

### III. DISCUSSION

15. In this *Order*, we strengthen our rules to protect consumers from slamming and cramming. Specifically, we codify rules against sales call misrepresentations and cramming. We also revise our rules to improve the effectiveness and address abuses of the TPV process. Our changes are tailored to ferret out and deter slamming and cramming. We thus decline to adopt broader, more burdensome rules that, as our record shows, could impose significant costs on voice providers and inhibit lawful switches (*i.e.*, switches chosen by consumers).

16. Our legal authority stems from Sections 201(b) and 258 of the Act.<sup>41</sup> Section 201(b) prohibits telecommunications carriers from engaging in unjust and unreasonable practices—which the Commission has interpreted to include deceptive marketing practices as well as deceptive billing practices, such as cramming.<sup>42</sup> Section 258 is clear in turn that carriers cannot execute switches unless they do so “in accordance with such verification procedures as the Commission shall prescribe,”<sup>43</sup> and the anti-slamming measures we add to the TPV process here are “verification procedures” consistent with the authority specified in Section 258.<sup>44</sup>

#### A. Misrepresentations on Sales Calls

17. Our recent enforcement actions reveal that deceptive marketing practices are a continuing source of slamming.<sup>45</sup> We therefore codify a rule to prohibit material misrepresentation or deceptive practices in sales calls to further reduce the incidence of slamming. We agree with a consumer

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<sup>39</sup> See, e.g., Adison Richards Comments at 9; CWA Reply Comments at 6; NASUCA Reply Comments at 2.

<sup>40</sup> See, e.g., AT&T Comments at 8-9; Billing Services Comments at 6; CALTEL Comments at 3-5; Comcast Comments at 3-9; Sprint Comments at 11; Verizon Comments at 11; CenturyLink Reply Comments at 8. A number of commenters indicate that the volume of slamming complaints constitutes only a small percentage of the total number of annual carrier switches and charges, suggesting that any prophylactic measures beyond codification are likely to harm consumers more than they benefit consumers. See, e.g., CALTEL Comments at 3-4 (the number of complaints identified in the NPRM is miniscule compared to the number of provider changes made in the years cited); Comcast Comments at 4-5 (noting that the number of slamming and cramming complaints has decreased in recent years and represent an infinitesimal percentage of the millions of annual carrier changes).

<sup>41</sup> 47 U.S.C. §§ 201(b), 258; see also, e.g., *First Truth-in-Billing Order*, 14 FCC Rcd at 7503-09, paras. 20-27; *April 2012 Order*, 27 FCC Rcd at 4476-79, paras. 114-22.

<sup>42</sup> See 47 U.S.C. § 201(b); see also, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3725, para. 7; *Preferred Forfeiture Order*, 30 FCC Rcd at 13791, paras. 17-18; *First Truth-in-Billing Order*, 14 FCC Rcd at 7503-09, paras. 20-27.

<sup>43</sup> 47 U.S.C. § 258(a).

<sup>44</sup> In *AT&T v. FCC*, 323 F.3d 1081 (D.C. Cir. 2003), in assessing whether a different FCC requirement was a “verification procedure,” the court held that a “procedure” is “a particular course of action” or “a particular step adopted for doing or accomplishing something.” In that regard, we note that a sales call is often an important “step” in the carrier change process, and that a misrepresentation in this step can fatally undermine the subsequent steps (*i.e.* verification procedures) such as the third-party confirmation that the person on the call wants to make a carrier change. Thus, the accuracy of the sales call is a critical “step” or “course of action” intertwined with the process of confirming that the consumer’s consent has been obtained to change carriers as required under our slamming rules. See 47 CFR § 64.1120(c)(3)(iii).

<sup>45</sup> See, e.g., *Preferred Forfeiture Order*, 30 FCC Rcd at 13720-21, paras. 18-19; *Advantage Forfeiture Order*, 32 FCC Rcd at 3723-28, paras. 7-13.

commenter that “a more stringent and bright line rule will [eliminate] ambiguity as to ensure carriers know slamming is wrong and give the Commission stronger language with which to defeat it.”<sup>46</sup> Consumers Union adds that a codified rule will give the Commission “additional tools to hold fraudulent actors accountable for slamming.”<sup>47</sup> Indeed, most commenters support a new rule and none opposes it. We further agree with commenters that a codified rule is consistent with the Commission’s statutory authority and prior enforcement actions.<sup>48</sup> In addition, we believe codifying this prohibition in our rules will provide carriers and consumers with more specific information and notice of this prohibited practice.

18. Upon a finding of material misrepresentation or deception in the sales call, the consumer’s authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a switch, *e.g.*, a TPV. In this regard, our enforcement cases make clear that sales misrepresentations may not be cured by a facially valid TPV.<sup>49</sup> When a consumer’s decision to switch carriers is predicated on false or deceptive information provided in a sales call, that consumer’s authorization to switch carriers can no longer be considered binding.<sup>50</sup> We clarify that the rule adopted herein is designed to deter slamming that occurs as a result of misrepresentations in sales calls that encourage the consumer to switch telecommunications carriers.<sup>51</sup>

19. We agree with commenters that a codified rule is consistent with the Commission’s statutory authority and prior enforcement actions.<sup>52</sup> Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”<sup>53</sup> The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b) of the Act.<sup>54</sup> Sales calls that contain misrepresentations

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<sup>46</sup> See Adison Richards Comment at 4.

<sup>47</sup> Consumers Union Comment at 4.

<sup>48</sup> See, *e.g.*, Consumers Union Comment at 4; NTCA Comments at 2-3; WTA Comments at 2; Arizona Commission Reply Comments at 3; CenturyLink Reply Comments at 4; NASUCA Reply Comments at 1-3; *Preferred Forfeiture Order*, 30 FCC Rcd at 13719-23, paras. 17-24; *Advantage Forfeiture Order*, 32 FCC Rcd at 3725-26, paras. 7-8, 12. In light of our enforcement actions, our focus here is misrepresentation on sales calls that precede a slam. We acknowledge that unscrupulous actors could misrepresent themselves in other communications with consumers beyond the scope of this proceeding.

<sup>49</sup> See, *e.g.*, *Advantage NAL*, 28 FCC Rcd at 6847-48, paras. 11-15.

<sup>50</sup> See, *e.g.*, *Advantage Forfeiture Order*, 32 FCC Rcd at 3725-30, paras. 7-13, 19-21.

<sup>51</sup> See, *e.g.*, *Slamming and Cramming NPRM*, 32 FCC Rcd at 6026, para. 12 (seeking comment on sales call abuses to further reduce slamming). Although some parties suggest that we extend this rule to CMRS and VoIP as a prophylactic measure, the corresponding record shows slamming to be primarily an issue with wireline telecommunications carriers and we see insufficient evidence to reverse our prior decision to exclude other services from our slamming rules. See, *e.g.*, 47 CFR § 64.1120(a)(3) (excluding CMRS providers from the verification requirements of the slamming rules). This in no way limits, however, the ability of the Commission to address misrepresentations by other parties under any relevant legal authority.

<sup>52</sup> See, *e.g.*, Consumers Union Comment at 4; NTCA Comments at 2-3; WTA Comments at 2; Arizona Commission Reply Comments at 3; CenturyLink Reply Comments at 4; NASUCA Reply Comments at 1-3; *Preferred Forfeiture Order*, 30 FCC Rcd at 13719-23, paras. 17-24; *Advantage Forfeiture Order* at 2-4, paras. 7-8, 12. In light of our enforcement actions, our focus here is misrepresentation on sales calls that precede a slam. We acknowledge that unscrupulous actors could misrepresent themselves in other communications with consumers beyond the scope of this proceeding.

<sup>53</sup> 47 U.S.C. § 201(b).

<sup>54</sup> See, *e.g.*, *Advantage Forfeiture Order*, 32 FCC Rcd at 3725, paras. 7-8 (finding the company violated Section 201(b) by misrepresenting that the call was from the consumer’s current carrier); *Business Discount Plan, Inc.*,

(continued....)

undermine the effectiveness of the carrier's validation procedures under Section 258, and thus are an unjust and unreasonable practice that is "in connection with" the communication service that is the subject of the verification process.

20. *Material Violations.* Several commenters request that the language of the NPRM's proposed rule banning sales call misrepresentations should be clarified with greater specificity to ensure that it is not construed overbroadly.<sup>55</sup> NASUCA, for example, suggests adding a "material" requirement to the proposed rule.<sup>56</sup> We agree with NASUCA and other commenters who ask that we ban only "material" misrepresentations.<sup>57</sup> In so doing, we acknowledge that occasional minor or trivial inaccuracies that have no bearing on the consumer's decision to switch carriers can occur and may not rise to a level warranting enforcement action, consistent with how we have exercised our enforcement discretion in the past. We decline, however, to require that such misrepresentations also be "intentional." The Commission has never articulated an intentionality standard when it has penalized carriers for misrepresentations on sales calls in the past. Rather, the Commission's forfeiture policies already require that, when determining the appropriate adjustment to a base forfeiture amount (rather than whether the act is a violation), we consider "egregious conduct" and "intentional violation" consistent with Section 503 of the Act.<sup>58</sup> We believe this allows sufficient flexibility to take "intent" into consideration as an aggravating or mitigating factor when a violation of this rule occurs.

21. *Defining "Sales Call."* One commenter asks us to elaborate on what constitutes a "sales call" in this context.<sup>59</sup> We agree that defining that term is important. In this instance, our slamming rules are designed to prevent a provider from switching a consumer's preferred carrier without the consumer's permission.<sup>60</sup> Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."<sup>61</sup> Thus, for purposes of the slamming rules, we clarify that a "sales call" is any telephone call in which a carrier encourages a subscriber to submit or execute a change in the subscriber's provider of telephone exchange service or telephone toll service.<sup>62</sup>

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Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*BDP Forfeiture Order*) (finding that the company violated Section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); Telecommunications Research & Action Center & Consumer Action, Memorandum Opinion and Order, 4 FCC Rcd 2157 (CC 1989) (*TRAC*) (recognizing that a carrier's failure to convey sufficient information about its rates, practices, and range of services can be an unreasonable practice in violation of Section 201(b)).

<sup>55</sup> See, e.g., AT&T Comments at 3; NCTA Comments at 7 (suggesting that carriers should not be subject to liability for inadvertent mistakes); NASUCA Reply Comments at 3 (suggesting that we add the word "material" to the proposed rule); USTelecom Comments at 3-4 (arguing that the rule should only apply to knowing misrepresentations).

<sup>56</sup> NASUCA Reply Comments at 3.

<sup>57</sup> See, e.g., AT&T Comments at 3; NASUCA Reply Comments at 3 (suggesting that we add the word "material" to the proposed rule).

<sup>58</sup> *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, 12 FCC Rcd. 17087, 17099, para. 27.

<sup>59</sup> See AT&T Comments at 6-7.

<sup>60</sup> See, e.g., 47 CFR § 64.1120.

<sup>61</sup> 47 U.S.C. § 258(a).

<sup>62</sup> In so doing, we do not limit or infringe the ability of the Commission to address misrepresentations in other contexts. We merely clarify that the rule adopted herein is directed at sales calls that encourage the consumer to switch their telephone provider. We also note that this definition is consistent with that of a "telephone solicitation" as defined in our telemarketing rules. See 47 CFR § 64.1200(f)(14) (defining a "telephone solicitation" as "the

(continued....)

22. *Recording Sales Calls.* We decline to mandate that sales calls be recorded.<sup>63</sup> Although we agree with commenters that recordings would aid in determining whether a misrepresentation occurred,<sup>64</sup> the record contains un rebutted evidence that any such mandate would necessitate industry-wide installation of recording technologies, amending existing protocols with vendors who make such calls on carriers' behalf, recording large numbers of calls, and storing those records for some specified period when the vast majority of these calls do not result in consumer complaints.<sup>65</sup> The principal consumer benefit of a recording mandate would be to aid enforcement, but we are confident in light of the success of our prior enforcement actions that we can continue to enforce our rules even without a mandate, and nothing in the record persuades us otherwise.

23. Nonetheless, we encourage carriers and their agents to record sales calls. We clarify that a consumer's allegation<sup>66</sup> of a sales call misrepresentation shifts the burden of proof to the carrier making the sales call to provide persuasive evidence to rebut the claim.<sup>67</sup> We believe that in those instances in which a consumer has provided credible evidence of a misrepresentation that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut those claims if they are without merit. In most instances, the consumer will not have access to these same materials. An accurate and complete sales call recording may be a carrier's best such evidence, and the record indicates that at least some carriers already record calls for training and monitoring purposes.<sup>68</sup> Those carriers that do not and/or choose not to record sales calls will have to develop other means to rebut credible consumer allegations of misrepresentations on sales calls.

#### **B. Unauthorized Charges on Telephone Bills**

24. We codify a prohibition on the placement of unauthorized charges on telephone bills (*i.e.*, cramming). Although cramming has been a long-standing issue addressed in various enforcement actions, and the Commission has adopted truth-in-billing rules to help detect it, the Commission has never codified a rule against cramming. We thus codify in a new Section 64.2401(g) of our truth-in-billing rules the prohibition against cramming that we have long enforced under Section 201(b) of the Act. We believe codifying the cramming prohibition for wireline and wireless carriers will act as a deterrent to this conduct.<sup>69</sup> In so doing, we agree with commenters that codifying a ban against cramming provides greater clarity to interested parties and will aid our enforcement efforts.<sup>70</sup> In addition, codifying this

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initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in property, goods, or services, which is transmitted to any person").

<sup>63</sup> See *Slamming and Cramming NPRM*, 32 FCC Rcd at 6032-33, paras. 30-32.

<sup>64</sup> See, *e.g.*, Consumers Union Comments at 8; John Shaw Comments at 2; WTA Comments at 3.

<sup>65</sup> See, *e.g.*, AT&T Comments at 10; CCTM Comments at 21; Teleplex Comments at 17; Verizon Comments at 13.

<sup>66</sup> Credible evidence could include specific allegations including the nature of the misrepresentation, the time and day of the sales call, and evidence of a switch, among other things.

<sup>67</sup> See, *e.g.*, CCTM Comments at 21.

<sup>68</sup> See, *e.g.*, AT&T Comments at 10; CenturyLink Reply Comments at 9. See also *Birch Communications, Inc.*, Order, 31 FCC Rcd 13510 at 13519 (2016) (requiring Birch to record all sales calls in their entirety as part of a consent decree).

<sup>69</sup> We note that with some limited exceptions, the Commission's truth-in-billing rules have been applied to CMRS providers. See 47 CFR § 64.2400(b) ("[t]hese rules shall apply to all telecommunications carriers"); see also *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at 6456, para. 16 (concluding that CMRS providers should no longer be exempt from the truth-in-billing requirement that billing descriptions be brief, clear, non-misleading and in plain language) (2005).

prohibition into our rules will provide consumers with more specific information and notice of this prohibited practice.

25. We disagree with the few commenters who suggest that wireless providers should be exempted from a rule against placing or causing to be placed unauthorized charges on their telephone bills.<sup>71</sup> In general, these commenters contend that cramming does not occur as frequently on wireless bills and that the wireless industry has taken measures to reduce the incidents of cramming.<sup>72</sup> Although we applaud these industry efforts, the record contains evidence that wireless cramming remains a concern.<sup>73</sup> As a result, we agree with those commenters who contend that wireless consumers should be afforded the same consumer protections as wireline consumers when such unauthorized charges appear on their telephone bills.<sup>74</sup> We note that this approach is also consistent with the Commission's prior enforcement investigations conducted under Section 201(b) holding wireless providers accountable for alleged unauthorized charges that appeared on wireless bills.<sup>75</sup>

### C. Third-Party Verifications

26. We take this opportunity to enhance the existing TPV process designed to protect consumers from slamming by removing unnecessary regulatory requirements that do not benefit consumers.<sup>76</sup> In addition, we adopt a new measure that will address abuses of the TPV process when used to fraudulently verify a consumer authorization to switch carriers. We believe these actions will streamline the TPV process while ensuring that it fulfills its intended purpose in protecting consumers from unauthorized changes in their preferred carrier.

27. *Authorizing Individual Services.* We eliminate the requirement in Section 64.1120(b) of our rules that TPVs must obtain the authorization for each individual service sold (*e.g.*, intraLATA and interLATA toll service) when the carrier is selling more than one telecommunications service to a subscriber.<sup>77</sup> We agree with those commenters who suggest there is minimal benefit to asking consumers if they want to separately switch individual services based on regulatory classifications that may be outdated and unfamiliar to them.<sup>78</sup> In declining during an earlier proceeding to require third-party verifiers to define terms such as "intraLATA toll" and "interLATA toll" for subscribers, the Commission noted that doing so might increase consumer confusion while adding unnecessary time and cost to the

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<sup>70</sup> See, *e.g.*, Consumers Union Comments at 4; John Shaw Comments at 3; Arizona Commission Reply Comments at 9; CenturyLink Reply Comments at 2; CWA Reply Comments at 6; NASUCA Reply Comments at 3; PA PUC Reply Comments at 4. The adoption of a specific prohibition against cramming under our rules does not affect our determination that cramming is an unjust and unreasonable practice that violates Section 201(b) of the Act.

<sup>71</sup> See, *e.g.*, AT&T Comments at 11; CTIA Comments at 5; Verizon Comments 8.

<sup>72</sup> See, *e.g.*, CTIA Comments at 5 (suggesting that the vast majority of unauthorized charges on wireless telephone bills occurred in the context of Premium SMS billing which is a vestige of the past).

<sup>73</sup> See, *e.g.*, Change for Win Comments at 7-8 (citing Maryland Attorney General mobile cramming complaint data); Consumers Union Comments at 3; FTC Comments (Report on Mobile Cramming).

<sup>74</sup> See, *e.g.*, Change for Win Comments at 1; Consumers Union Comments at 2-3; Arizona Commission Reply Comments at 11; CWA Reply Comments at 4; NASUCA Reply Comments at 2.

<sup>75</sup> See, *e.g.*, *Cellco Partnership D/B/A Verizon Wireless Unauthorized Third-Party Billing Charges*, Order, 30 FCC Rcd 4590 (2015) (resolving allegations that Verizon charged subscribers for products and services that they did not authorize); *T-Mobile USA, Inc. Unauthorized Third-Party Billing Charges*, Order, 29 FCC Rcd 15111 (2014) (resolving allegations that T-Mobile charged subscribers for products and services that they did not authorize).

<sup>76</sup> See *Slamming and Cramming NPRM*, 32 FCC Rcd at 6033, para. 34.

<sup>77</sup> See 47 CFR § 64.1120(b).

<sup>78</sup> See, *e.g.* CCTM Comments at 24; Teleplex Comments at 19 (there is no justification for asking consumers if they want to separately switch services based on arcane regulatory classifications that are meaningless).

verification process.<sup>79</sup> In addition, the Commission noted that market changes made use of these terms less significant.<sup>80</sup>

28. We believe this trend has continued as the market has moved toward all-distance service, rendering the necessity of distinguishing between services increasingly less important. We also note that, to the extent that consumers express any confusion regarding the services being switched, our verification procedures require a “brief description” when the consumer demonstrates confusion regarding the nature of that service(s).<sup>81</sup> We believe that suffices to ensure that consumers understand the nature of the service(s) being switched without the necessity of obtaining authorization for each individual service.

29. *TPV Abuses.* We remain concerned that the TPV process has been misused in some instances to fraudulently verify consumer authorization to switch providers. Our prior enforcement actions confirm instances of abuse of the TPV process.<sup>82</sup> Although the current record does not contain a sufficient basis to eliminate this widely-used verification mechanism, we do believe that these documented abuses warrant additional oversight.<sup>83</sup> As a result, we conclude that any carrier that becomes the subject of a Commission forfeiture order through abuse of that process will be suspended for a period of two years from using the TPV process to confirm consumer switches. That will necessitate that these carriers use other recognized sources of evidence under our rules, such as an LOA, to confirm a consumer switch during the pendency of that suspension. We believe this requirement will ensure that greater care is taken by both carriers and third-party verifiers to ensure that the TPV process is not abused. We note that this suspension process will be applied only going forward from the effective date of the rules adopted herein. Thus, carriers and verifiers will be afforded an opportunity to take proactive measures to correct any deficiencies that have resulted in prior enforcement actions.

#### D. Other Measures

30. In light of the enhanced consumer protections afforded by the rules adopted herein, the apparent diminishing nature of the slamming and cramming problem as evidenced by recent complaint data, and the potential costs of compliance with additional requirements, we decline to mandate any other changes to our rules. In so doing, we acknowledge the arguments of commenters who suggest that a cost-benefit analysis does not support additional measures at this time.<sup>84</sup> Specifically:

- (A) *Default Presubscribed Interexchange Carrier (PIC) Freeze and Double-Checking a Switch with the Consumer.* We agree with the majority of commenters that these additional steps are unnecessary at this time.<sup>85</sup> Commenters supporting a default freeze and double-check requirement do not offer specific benefits that would outweigh the costs of these measures,

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<sup>79</sup> See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Fourth Report and Order, 23 FCC Rcd 493, at 503-05, paras. 24-26 (2008).

<sup>80</sup> *Id.* at 503-04, para. 25.

<sup>81</sup> See 47 CFR § 64.1120(c)(3)(iii).

<sup>82</sup> See, e.g., *One Link NAL*, 31 FCC Rcd at 1407, n.22. Carriers have used forged TPVs in other cases. See, e.g., *GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 1; *Optic Forfeiture Order*, 30 FCC Rcd at 2539, para. 1.

<sup>83</sup> In the *Slamming and Cramming NPRM*, we sought comment on eliminating TPVs, including whether we should use alternative verification mechanisms and the costs of doing so. In addition, we expressed concern about falsification of TPVs and sought comment on how better to ensure the validity of TPVs. See *Slamming and Cramming NPRM*, 32 FCC Rcd at 6033, para. 33.

<sup>84</sup> See, e.g., AT&T Comments at 8-9; Billing Services Comments at 6; CALTEL Comments at 3-5; Comcast Comments at 3-9; Sprint Comments at 11; Verizon Comments at 11; CenturyLink Reply Comments at 8.

<sup>85</sup> See, e.g., AT&T Comments at 8-9; Billing Services Comments at 7; CALTEL Comments at 3-5; CCTM Comments at 14-15; NCTA Comments at 4.

including their potential to inhibit consumer switching and competition in the relevant markets and the ability for carriers to quickly port customers.

- (B) *Eliminating TPVs.* We decline on this record to eliminate TPVs as a means to prove a consumer has authorized a switch. Although our enforcement actions show that TPVs are subject to abuse, we believe that TPVs can be a useful safeguard against slamming to a significant degree and therefore decline to eliminate their use at this time. We believe a better approach is to modify our TPV requirements as stated above.
- (C) *Default Blocks of Third-Party Local and Long-Distance Charges.* We find that the potential cost of changes to carrier billing systems to effectuate default blocks outweighs the likely consumer benefit of banning third-party telecommunications charges. As USTelecom states, the declining market for separate local and long-distance service has made cramming for such services less problematic for consumers.<sup>86</sup> Thus, we decline to adopt such a requirement at this time.

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Act Analysis

31. Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>87</sup> the Commission's Final Regulatory Flexibility Analysis for the *Order* is attached as Appendix B.

##### B. Paperwork Reduction Act

32. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

##### C. Congressional Review Act

33. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. § 801(a)(1)(A).

##### D. Materials in Accessible Formats

34. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

35. Additional Information. For additional information on this proceeding, contact Richard D. Smith, [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov) or (717) 338-2797, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

#### V. ORDERING CLAUSES

36. **IT IS ORDERED**, pursuant to the authority contained in Sections 1-4, 201(b), and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201(b), 258, that this *Report and Order* **IS ADOPTED** and that part 64 of the Commission's rules, 47 CFR §§ 64.1120, 64.2401, are amended as set forth in Appendix A.

37. **IT IS FURTHER ORDERED** that this Report and Order **SHALL BE EFFECTIVE** 30 days after publication of a summary in the Federal Register.

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<sup>86</sup> USTelecom Comment at 3.

<sup>87</sup> See 5 U.S.C. § 603.

38. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

39. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

The Federal Communications Commission amends part 64 of Title 47 of the Code of Federal Regulations as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 616, 620, and the Middle Class Tax Relief Act and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend § 64.1120 by adding paragraphs (a)(1)(i)(A) and revising paragraph (b) to read as follows:

**§ 64.1120 Verification of orders for telecommunications services.**

(a) \*\*\*

(1) \*\*\*

(i) Authorization from the subscriber, subject to the following:

(A) Material misrepresentation and/or deception on the sales call is prohibited. Upon a consumer's credible allegation of a sales call misrepresentation, the burden of proof shifts to the carrier making the sales call to provide persuasive evidence to rebut the claim. Upon a finding that such a material misrepresentation or deception has occurred on a sales call, the subscriber's authorization to switch carriers will be deemed invalid.

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(b) Any telecommunications carrier that becomes the subject of a Commission forfeiture action through a violation of the third-party verification process set forth in paragraph (c)(3) of this section will be suspended for a two-year period from utilizing the third-party verification process to confirm a carrier change.

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3. Amend § 64.2401 by adding paragraph (g) to read as follows:

**§64.2401 Truth-in-Billing Requirements.**

\* \* \* \* \*

(g) *Prohibition against unauthorized charges.* Carriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber.

## APPENDIX B

### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Slamming and Cramming NPRM*.<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

#### A. Need for, and Objectives of, the Final Rules

2. This *Order* adopts rules to strengthen consumer protections from slamming and cramming. Slamming is the unauthorized change of a consumer's preferred interexchange telecommunications service provider, and cramming is the placement of unauthorized charges on a consumer's telephone bill. Despite existing slamming and truth-in-billing rules, recent enforcement actions indicate that the most vulnerable consumers, including the elderly and non-English speakers, remain at significant risk of being the victims of these fraudulent practices because unscrupulous carriers often make it difficult to detect such conduct. Specifically, we adopt rules designed to provide greater clarity of these existing prohibitions and assist in our enforcement actions where such conduct occurs

3. Section 258 of the Act makes it unlawful for any telecommunication carrier to "submit or execute a change in accordance with such verification procedures as the Commission shall prescribe."<sup>4</sup> The rules adopted herein will strengthen our ability to deter slamming by addressing misleading statements made in sales calls which the record confirms are a substantial factor in slamming. They will also allow us to improve the existing TPV process designed to provide safeguards from slamming by eliminating the requirement that the consumer's authorization be obtained for every service to be switched when selling more than one telecommunications service. In addition, any telecommunications carrier who is the subject of a Commission forfeiture action for abuse of the TPV process will be suspended for a period of two years from using that process to confirm a consumer switch. . In addition, the Commission has found on numerous instances that cramming is an "unjust and unreasonable" practice in violation of Section 201(b) but has never codified a prohibition against cramming in our rules. Doing so herein provides greater clarity of this long-recognized prohibition to interested parties and will assist in our enforcement efforts of this fraudulent practice.

#### B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. One comment was filed that specifically addressed the proposed rules and policies presented in the IRFA.<sup>5</sup> Although supporting the adoption of the two proposed rules contained in the *Slamming and Cramming NPRM*, NTCA argues that the IRFA was deficient because the other measures discussed therein were vague and lacked specificity.<sup>6</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See *Slamming and Cramming NPRM*, 32 FCC Rcd at 6038-43, Appx. B.

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See 47 U.S.C. § 258(a).

<sup>5</sup> See NTCA Comments at 5-6.

<sup>6</sup> *Id.* at 1-3. We note that we have declined to adopt the vast majority of these other measures herein.

**C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration**

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>7</sup>

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules, adopted herein.<sup>8</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>9</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>10</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>11</sup>

**1. Wireline Carriers**

8. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>12</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>13</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total,

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<sup>7</sup> 5 U.S.C. § 604 (a)(3).

<sup>8</sup> See 5 U.S.C. § 603(a)(4).

<sup>9</sup> See 5 U.S.C. § 601(6).

<sup>10</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

<sup>11</sup> See 15 U.S.C. § 632.

<sup>12</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>13</sup> 13 CFR § 121.201, NAICS code 517110.

3,083 operated with fewer than 1,000 employees.<sup>14</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

9. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>15</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>16</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>17</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>18</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>19</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a

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<sup>14</sup> 2012 U.S. Economic Census, NAICs Code 517110, at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodT ype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodT ype=table).

<sup>15</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>16</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>17</sup> 2012 U.S. Economic Census, NAICs Code 517110, at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodT ype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodT ype=table).

<sup>18</sup> 5 U.S.C. § 601(3).

<sup>19</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>20</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>21</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> Consequently, the Commission estimates that the majority of IXCs are small entities.

12. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, pre-paid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>23</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>24</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>25</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small.

## 2. Wireless Carriers

13. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.<sup>26</sup> The appropriate size standard under SBA rules is that such a business is

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<sup>20</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories” (Feb. 23, 2016) <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>21</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>22</sup> 2012 U.S. Economic Census, NAICS Code 517110 (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>23</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories” (Feb. 23, 2016) <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>24</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>25</sup> 2012 U.S. Economic Census, NAICS Code 517110 (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>26</sup> U.S. Census Bureau, North American Industry Classification System, Definition of “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210, available at <<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search>>

small if it has 1,500 or fewer employees.<sup>27</sup> For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>28</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>29</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

14. In this *Order*, we adopt rules to enhance the existing consumer protections from slamming and cramming. Specifically, we adopt rules to codify a ban on: i) material misrepresentations on sales calls for voice services; and ii) unauthorized charges on telephone bills. Although the Commission has previously held that these practices are unjust and unreasonable practices under Section 201(b) of the Communications Act of 1934, as amended (the Act), our rules have not expressly prohibited them. Because these prohibitions have been long recognized pursuant to our enforcement actions, however, they should not necessitate any new burdens for those carriers that are in compliance. In addition, we take steps to improve the effectiveness of the existing third-party verification (TPV) process by eliminating the requirement that carriers obtain the authorization to switch each individual service when selling more than one service and by suspending any carrier for a two-year period from using the TPV process when it becomes the subject of a Commission forfeiture action.<sup>30</sup> Affected parties may have to modify their existing TPV process to ensure they are in compliance.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

15. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”<sup>31</sup>

16. The rules adopted herein codify long-recognized consumer protections from slamming and cramming. In prior enforcement actions, the Commission has previously held that these practices are unjust and unreasonable practices under Section 201(b) of the Act. As a result, the economic impact on affected carriers should be minimal because they impose no new requirements. In declining to adopt other measures discussed in the *NPRM*, the Commission has taken into consideration the potential burdens on carriers, including smaller carriers, in determining that such actions are not justified at this time.<sup>32</sup> In these instances, we have taken into consideration the concerns of industry commenters that the potential costs and delays that may result from these measures outweigh the potential benefits to

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<sup>27</sup> See 13 CFR 121.201, NAICS Code 517210

<sup>28</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>29</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1,000 employees or more”.

<sup>30</sup> See *supra* para. 23.

<sup>31</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>32</sup> See *supra* para. 26.

consumers.<sup>33</sup>

**G. Report to Congress**

17. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>34</sup> In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.

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<sup>33</sup> *Id.*

<sup>34</sup> *See* 5 U.S.C. § 801(a)(1)(A).

## APPENDIX C

## List of Commenters

The following parties have filed comments in response to the July 14, 2017 NPRM.

<u>Commenter</u>	<u>Abbreviation</u>
<b>Alliance for Telecommunications Industry Solutions</b>	<b>ATIS</b>
AT&T Services Inc.	AT&T
<b>Arizona Corporation Commission</b>	<b>Arizona Commission</b>
Billing Services Group North America, Inc.	Billing Services
California Association of Competitive Telecom Companies	CALTEL
<b>CenturyLink</b>	<b>CenturyLink</b>
Change to Win	Change to Win
Coalition for Competitive Telecommunications Market	CCTM
Comcast Corp.	Comcast
<b>Communications Workers of America</b>	<b>CWA</b>
Consumers Union et al.	Consumers Union
CTIA – The Wireless Association	CTIA*
Federal Trade Commission	FTC
<b>Incompas</b>	<b>Incompas</b>
Istonish	Istonish
NCTA – The Internet & Television Assoc.	NCTA
NTCA – The Rural Broadband Assoc.	NTCA
National Association of State Utility Consumer Advocates	NASUCA
<b>Pennsylvania Public Utility Commission</b>	<b>PA PUC</b>
<b>Adison Richards</b>	<b>Adison Richards</b>
John A. Shaw	John Shaw
Sprint Corp.	Sprint
Teleplex	Teleplex
USTelecom Assoc.	USTelecom
Verizon	Verizon
Voice on the Net Coalition	VON
WTA – Advocates for Rural Broadband	WTA

\* filing both comments and reply comment (bold - reply comments only)