



Federal Communications Commission
Washington, D.C. 20554
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DA 19-220

SMALL ENTITY COMPLIANCE GUIDE

Protecting Consumers from Unauthorized Carrier Changes and Unauthorized Charges

FCC 18-78
CG Docket No. 17-169
Released June 8, 2018

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking docket(s). This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in CG Docket No. 17-169, the Commission adopted rules that are intended to protect consumers from unscrupulous carriers that change their voice service providers without permission (“slamming”) or bill them for unauthorized charges (“cramming”). While market changes and prior Commission efforts have reduced the incidence of slamming and cramming, these practices persist, often targeting the most vulnerable consumers.

Specifically, in the *Report and Order* the Commission amended its rules to codify a ban on: (1) material misrepresentations on sales calls for voice services; and (2) placing unauthorized charges on telephone bills. In addition, the *Report and Order* improves the effectiveness of the existing third-party verification (TPV) process by: (1) 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; and (2) suspending carriers from using the TPV process for a period of five-years when they have been subject to a Commission forfeiture fine for abuse of that process.

II. COMPLIANCE REQUIREMENTS

In the *Report and Order*, the Commission addressed issues pertaining to unauthorized changes in service providers and charges on telephone bills.

A. Misrepresentations on Sales Calls (47 CFR § 64.1120(a))

- Material misrepresentations on sales calls are prohibited. Upon a consumer’s credible allegation of a sales call misrepresentation, the burden shifts to the carrier making the sales call to provide persuasive evidence to rebut the claim. Upon a finding that such a material misrepresentation has occurred on a sales call, the subscriber’s authorization to switch carriers will be deemed invalid.
- For purposes of this rule, 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.

B. Unauthorized Charges on Telephone Bills (47 CFR § 64.2401(g))

- Carriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber (“cramming”).
- Although cramming has been addressed in various enforcement actions, the Commission codifies a prohibition against unauthorized charges in our rules for wireline and wireless carriers that will act as a deterrent to this conduct.

C. Third-Party Verifications (47 CFR § 64.1120(b))

- Any telecommunications carrier that becomes subject of a Commission forfeiture action through a violation of the TPV process set forth in the slamming rules will be suspended for a five-year period from utilizing the TPV process to confirm a carrier change.
- This necessitates that carriers that become subject to such forfeiture action must use other recognized sources of evidence under our rules, such as a Letter of Agency, to confirm a consumer switch during the pendency of that suspension.

- The Commission eliminated a prior requirement in Section 64.1120(b) of our rules that carriers 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.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

This *Report and Order* imposes no new recordkeeping and reporting requirements.

IV. IMPLEMENTATION DATE

The final rules adopted in the *Report and Order* became effective on August 16, 2018, thirty (30) days after publication of the text or summary thereof in the Federal Register.

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

<https://docs.fcc.gov/public/attachments/FCC-18-78A1.pdf>
<https://docs.fcc.gov/public/attachments/FCC-18-78A1.txt>

A copy of the Federal Register Summary of the *Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2018-07-17/pdf/2018-14151.pdf>