FCC FACT SHEET[*]

Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges

Notice of Proposed Rulemaking - 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 FCC Chairman has proposed a *Notice of Proposed Rulemaking* (*NPRM*) outlining steps to curtail slamming and cramming.

What the *NPRM* Would Do:

- Propose to codify a rule prohibiting misrepresentations on carrier telemarketing calls to consumers that often precede a carrier switch.
- Propose to codify a rule against cramming.
- Propose to require carriers to automatically freeze a consumer's choice of telecommunications providers until the consumer chooses to lift the freeze (rather than the current rules, which require consumers to request a freeze first).
- Seek comment on requiring wireline billing carriers to block certain third-party charges unless consumers have agreed to opt in to such charges.
- Seek comment on allowing the consumer's current carrier to double-check with the consumer that he or she actually wants to switch providers.
- Seek comment on requiring carriers to record their sales calls and whether they should be required to give consumers specific information to ensure the consumer knows the purpose of the call.
- Seek comment on banning third-party verification, a major source of slamming, as a means to confirm a carrier change or, in the alternative, on making it more difficult for carriers to fabricate consumer consent to a switch by requiring verifiers to elicit from the consumer all phone numbers that the consumer wants to switch to a new carrier.

[*] 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
	)	

NOTICE OF PROPOSED RULEMAKING*

Adopted: [] **Released: []**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. All too often, unscrupulous carriers target vulnerable populations like the elderly, recent immigrants, small businesses, and Spanish speakers, to carry out unauthorized carrier changes, or "slams." These carriers misrepresent who they are and why they are calling, fraudulently verify carrier changes, and add unauthorized charges, or "crams," onto consumers' bills. Some sales agents pretend they are calling from a consumer's existing carrier, others pretend to call about a package delivery to record a consumer saying certain key phrases like their name and "yes." Still others bill for services never rendered or refuse to stop billing for new services even after a consumer terminates service.

2. With this *Notice of Proposed Rulemaking*, we seek comment on additional steps to protect consumers from slamming and cramming. We believe these steps will both strengthen the Commission's ability to take action against slammers and crammers, and deter carriers from slamming and cramming in the first place.

II. BACKGROUND

A. Slamming Rules

3. Section 258 of the Communications Act of 1934, as amended (Communications Act or 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."[1] The Commission has implemented Section 258 in a series of orders to prevent a provider from switching a consumer's

---

* This document has been circulated for tentative consideration by the Commission at its July 2017 open meeting. The issues referenced in this document and the Commission's ultimate resolutions 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. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding 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(a), 1.1203.

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

preferred carrier without the consumer's permission.[2] Commission rules specify that carriers may only submit a switch request if they have evidence the consumer has confirmed it.[3] The rules specify four forms of 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 for our proposals, a third-party verification (TPV), which is a recorded conversation between an independent third-party verifier and the consumer.[4] The rules also require certain disclosures for TPVs, among other requirements.[5] To further protect consumers from slamming and provide them with control over their service providers, the Commission's rules allow consumers to opt in to freeze their choice of carriers.[6] At the same time, the rules do not allow for the executing carrier to verify that the subscriber wants to change carriers, so as to avoid undue delay in authorized switches.[7] Finally, the Commission adopted rules for calculating slamming carrier liability.[8]

4. In 1999, the Commission adopted rules to alleviate consumer confusion about their telecommunications bills and to deter slamming and cramming.[9] The "truth-in-billing" rules apply to traditional landline voice service and in some cases to Commercial Mobile Radio Service (CMRS). 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.[10] To address a resurgence in cramming,[11] the Commission in 2012 required that traditional landline carriers that offer consumers the ability to block third-party charges—the usual source of crammed charges—clearly and conspicuously

---

[2] *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, 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 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 notice, we use the terms "consumer" and "subscriber" interchangeably.

[3] 47 CFR § 64.1120(c).

[4] *Id*.

[5] 47 CFR § 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).

[6] *See* 47 CFR § 64.1190.

[7] *See Second Report and Order*, 14 FCC Rcd at 1567, para. 98; *see also* 47 CFR § 64.1120(a)(2).

[8] 47 CFR § 64.1140(a).

[9] *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 (1999) *(First Truth-in-Billing Order).*

[10] 47 CFR § 64.2401.

[11] *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*).

notify consumers of that option at the point of sale, on their website, and on each bill.[12] 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' telephone bills. The Commission has, however, repeatedly found that cramming is an "unjust and unreasonable" practice in violation of Section 201(b) of the Act.[13]

B. The Continuing Problem

5. Notwithstanding the Commission's rulemaking and enforcement actions to date, slamming and cramming continue to be a problem. For example, in the two-year period from the beginning of 2015 through the end of 2016, the Commission received almost 8,000 slamming and cramming complaints.[14] The Commission's Enforcement Bureau has brought multiple actions against carriers for slamming and cramming violations,[15] and illustrate that today unscrupulous carriers often slam and cram consumers by targeting vulnerable people who may not realize they are being scammed or who may fail to file a complaint if they do. These carriers misrepresent who they are and why they are calling, fraudulently verify carrier changes, and cram long distance charges onto consumers' bills.

6. Recent enforcement actions arising from apparent carrier misrepresentations vividly illustrate the problem and need for increased consumer protection against slamming and cramming.[16] For example, in the *OneLink NAL*, a Commission investigation found that sales agents for three carriers

---

[12] 47 CFR § 64.2401(f).

[13] *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*).

[14] Even these numbers understate the problem. Many consumers who fall victim to slamming and cramming may not file a complaint because they do not detect the violations. Other may characterize a slam or cram as a "billing" complaint—and we received just over 50,000 billing complaints in 2015 and 2016. And Commission rules allow states to administer the Commission's slamming rules, *see* 47 CFR §64.1110, so consumers in states like California, New York, and Texas must file their slamming complaints with their state public utility commissions rather than the Commission.

[15] 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*), Forfeiture Order, FCC 17-50 (Apr. 25, 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).

[16] 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.

apparently told consumers they were calling about a package delivery in an effort to record the consumers' voices,[17] and apparently targeted Spanish speakers.[18] The carriers then apparently edited the recordings of consumer statements to produce fake TPVs.[19] 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.[20] 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.[21]

7. 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, saying that they were the billing agent for AT&T or that they were partnered with AT&T.[22] 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 they were a sub-division, falsely explaining that this was a technicality required by the FCC.[23]

8. 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.[24] 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.[25] If the company's attempted slam was thwarted by a preferred carrier freeze, it nonetheless crammed consumers by billing them for its long distance services.[26] Consumers stated that the third-party verifications did not contain the misrepresentations that occurred on the sales call.[27]

9. 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 through their local exchange carrier bills or on bills sent to them directly by the crammer.[28] One complainant explained that after her grandmother, who did not use long distance service,

---

[17] *OneLink NAL*, 31 FCC Rcd at 1403, paras. 2-3.

[18] *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.

[19] *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.

[20] *OneLink NAL*, 31 FCC Rcd at 1409, para. 11.

[21] *Id*. at 1410, para. 11.

[22] *Preferred Forfeiture Order*, 30 FCC Rcd at 13720, para. 18.

[23] *Id.* at 13721, para.19.

[24] *Advantage Forfeiture Order* at 3-6, para. 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.

[25] *Advantage Forfeiture Order* at 4, para. 12.

[26] *Id*. at 5, para. 15.

[27] *Advantage NAL,* 28 FCC Rcd at 6847-48, para. 11.

[28] *Central Forfeiture Order*, 31 FCC Rcd at 10400, para. 18.

died and her phone was disconnected, Central continued to bill her for its "service" for several months.[29]

10. The steps we propose today to strengthen our rules seek to address the evolving practices of these bad actors with respect to slamming and cramming.

III. NOTICE OF PROPOSED RULEMAKING

11. In this *Notice*, we seek comment on ways to strengthen our rules to protect consumers from slamming and cramming. We believe our legal authority stems directly from Sections 201(b) and 258 of the Act.[30] The Commission has based slamming and cramming rules on these provisions of the Act in the past.[31] We note that Section 258 is clear that carriers cannot execute switches unless they do so "in accordance with such verification procedures as the Commission shall prescribe."[32] We believe the anti-slamming steps we propose here are "verification procedures" consistent with the authority specified in Section 258. Similarly, the Commission has found that both Sections 201(b) and 258 support our truth-in-billing rules, including those to prevent cramming on consumers' bills.[33] We seek comment on the nature and scope of our authority to adopt the rules we propose in this *Notice*.

A. Banning Misrepresentations and Unauthorized Charges

12. Our recent enforcement actions reveal that a major source of slamming is deception in the sales calls.[34] We seek comment on proposed new rules to address sales call abuses and further reduce slamming. The Commission's current rules contain detailed verification procedures, adopted under Section 258 of the Act, that specify that carriers shall not submit or execute carrier changes without authorization from the subscriber and verification of that authorization.[35] 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.[36] Although the Commission has in place verification rules to prevent slamming, our rules do not expressly ban carrier- or carrier-agent-misrepresentations on the sales calls that typically precede a slam. We thus propose to codify, pursuant to Sections 258 and 201(b), a new Section 64.1120(a)(1)(i)(A) banning misrepresentations on the sales calls and stating that any misrepresentation or deception would invalidate any subsequent verification of a carrier change, even where the submitting carrier purports to have evidence of consumer authorization (*e.g.*, a TPV recording).[37] We believe codifying such a ban would provide even greater clarity to carriers and will aid our enforcement efforts. We seek comment on this proposal. Are there any potential downsides to a codified rule against sales call misrepresentation? Would such a rule impose any burden on legitimate marketing?

13. We also propose to codify a rule against cramming. While cramming has been a long-

---

[29] *Id*. at 10393, para. 2.

[30] 47 U.S.C. §§ 201(b), 258.

[31] *See, 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.

[32] 47 U.S.C. § 258(a).

[33] *See, e.g.*, *First Truth-in-Billing Order*, 14 FCC Rcd at 7503-09, paras. 20-27.

[34] *See, e.g.*, *Preferred Forfeiture Order*, 30 FCC Rcd at 13720-21, paras. 18-19; *Advantage Forfeiture Order* at 3-6, paras. 7-13.

[35] 47 CFR § 64.1120(a)(1)(i)-(ii).

[36] *See, e.g.*, *Preferred Forfeiture Order*, 30 FCC Rcd at 13719-23, paras. 17-24; *Advantage Forfeiture Order* at 2-4, paras. 7-8, 12.

[37] In light of our enforcement actions, our focus here is misrepresentation on the sales call. We acknowledge that unscrupulous actors could misrepresent themselves in other communications with consumers beyond the scope of this proceeding.

standing problem and the Commission has adopted truth-in-billing rules to help detect it, the Commission has never codified a rule against cramming. We thus propose to codify in a new Section 64.2401(g) the existing prohibition against cramming that we have enforced under Section 201(b) of the Act.[38] We believe codifying the cramming prohibition for wireline and wireless carriers would act as a deterrent. We believe codifying a ban against cramming would provide even greater clarity to carriers and will aid our enforcement.[39] We seek comment on this proposal. Are there any potential downsides to such a rule? Are there limitations on the Commission's ability to adopt the proposed cramming rule? The truth-in-billing rules do not define of "telephone bill." We seek comment on whether we should adopt such a definition for clarity of our rules. Many consumers today receive electronic bills and have constant online access to their telephone account showing in near real-time all fees, charges and assessments. If we define "telephone bill" in our rules, should we include the various ways that consumers can keep track of their telephone account activity?

B. PIC Freezes and Third-Party Billing

1. Preferred Carrier Freezes by Default

14. The Commission's current rules allow consumers to protect themselves from slamming by "freezing" their choice of wireline providers if their local exchange carrier offers that ability.[40] But to do so, a consumer must affirmatively opt in.[41] Given the trend of consumers preferring to buy local and long-distance services together rather than separately, as well as emerging abusive practices in the market for resold local and long-distance services, we propose to make freezes the default so that consumers are automatically afforded additional protection against slamming, rather than requiring them to take extra steps to do so. We believe this would give consumers more control to prevent slamming. We seek comment on our proposal.

15. Today, carriers must offer freezes for local, intraLATA and interLATA services and get separate authorization from consumers for each of the services the consumer chooses to freeze.[42] A majority of consumers today purchase bundles of services rather than selecting individual services,[43] and we believe most consumers have no reason to distinguish interLATA and intraLATA services. We thus propose to eliminate the service distinctions for these purposes and have carrier freezes apply to all telephone services a consumer has with no need to seek separate authorization.[44] We seek comment on this proposal.

16. If we were to adopt a default freeze rule, should it apply to all local exchange carriers, or only those that currently offer freezes? How should consumers be notified about this change? Should the Commission change its current requirements for notifying consumers about freezes,[45] or relax those

[38] *See, e.g.*, *Advantage Forfeiture Order* at 6, para. 14; *see also supra* notes 14, 35.

[39] We note that this proposed cramming prohibition would apply to all unauthorized charges, while our proposed opt-in mechanism discussed below would apply to third-party charges billed by wireline carriers.

[40] 47 CFR § 64.1190.

[41] *See Second Report and Order*, 14 FCC Rcd at 1576, para. 113.

[42] 47 CFR § 64.1190(c).

[43] As of 2016, 65% of incumbent LEC residential switched access lines are purchased with long distance service, 84% of non-incumbent LEC residential switched access lines are purchased with long distance service and 66% of LEC residential switched access lines are purchased with long distance service. Federal Communications Commission, Voice Telephone Services: Status as of June 30, 2016 (2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf.

[44] 47 CFR § 64.1190(c).

[45] At a minimum, carriers are currently required to provide to consumers: 1) an explanation in clear and neutral language of what a preferred carrier freeze is and what services could be subject to a freeze; 2) a description of the

(continued….)

requirements? Our goals are to ensure that the default freeze is a strong safeguard against slamming while not unduly burdening consumers who may want to opt out of a freeze or giving executing carriers who may be losing the customer an opportunity to behave anti-competitively. We seek comment on how to achieve these goals along with whether carriers should be able to charge for freezes.

17. What are the costs and benefits of a default freeze? For carriers that already offer consumers a freeze option, the cost to implement a default freeze should be relatively low, essentially changing a field in a preexisting database. For carriers that do not currently offer a preferred carrier freeze to their consumers, the implementation costs would presumably be greater. The benefits of a default freeze may be substantial, because would-be slammers would face significant obstacles to carrying out their intended slams. We seek comment on these views and ask commenters to provide details on costs and benefits. Can we mitigate the costs by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers? Could costs be further mitigated by applying a default freeze only to new customers and not existing ones? Should we distinguish between smaller local exchange carriers and larger local exchange carriers in what rules should apply? What would be the cost savings for consumers and carriers in avoiding the expense and inconvenience of restoring service with their original carrier after a slam and seeking a refund for the unauthorized charges?

2. Blocking Certain Third-Party Billing by Default

18. Today, our rules do not prohibit carriers from placing third-party charges on consumers' bills without verification by the consumer, a practice that has led to cramming. Consumers who do not have a preferred long distance provider have been crammed when a third-party carrier adds its long distance service to the consumer's bill without authorization. Some consumers discover a slam and have their preferred carrier's service reinstated but are still billed by the slamming carrier for local or long-distance service.

19. We seek comment on requiring wireline carriers to block third-party charges for local and long-distance service—a frequent source of slamming-related cramming—by default, and only bill such charges if a consumer opts in.[46] Do consumers generally expect to be charged for local or long-distance service by third parties? What trends, if any, could inform our understanding of how consumers make choices in the market for telephone service? How prevalent are such third-party charges? 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 providers generally offer local and long-distance services as a bundle or for some other reason?

20. How exactly should an opt-in process for third-party local and long-distance service work? For example, if a carrier offered its subscribers access to information about their account online, could a simple control be added so that consumers could opt in (or later opt back out) of third-party local and long-distance service billing? What opt-in options should be available for consumers that do not have Internet access? What information, if any, should be presented to consumers before they opt in to such

(Continued from previous page)
steps necessary to lift a preferred carrier freeze, an explanation that these steps are in addition to the regular verification rules for changing a preferred provider and that the subscriber will not be able to make a change in provider unless the preferred carrier freeze is lifted; and 3) an explanation of any charges associated with the preferred carrier freeze. *See Second Report and Order*, 14 FCC Rcd at 1581, paras. 121-22.

[46] The Commission has previously determined that cramming is an "unjust and unreasonable practice." Section 201(b) declares any unjust or unreasonable practice to be unlawful. Thus, nothing in this NPRM changes or otherwise modifies that determination. Cramming remains an unjust and unreasonable practice and violates Section 201(b). The Enforcement Bureau will continue to investigate and take appropriate enforcement action when carriers engage in cramming. The Commission has previously sought comment on opt-in approaches to blocking third-party billing but has not adopted an opt-in requirement. *April 2012 Order*, 27 FCC Rcd at 4456, 4484-89, paras. 49, 136-49.

third-party charges? Should opting in last indefinitely, or sunset after some period of time? Or could consumers opt in for only a single service change? How should consumers be made aware of the opt-in option? Should we require providers to notify consumers at the point of sale? Should such notice appear on the provider's website and advertising materials or on consumers' bills? We note that several carriers have committed to blocking certain non-telecommunications third-party charges in the past.[47] We seek specific comments on the processes they used to inform consumers about these changes.

21. We also seek comment on several corner cases. For local exchange carriers that do not offer long-distance service, should opt in be required before *any* third-party long-distance service is charged to the consumer or only *any change* in third-party long-distance service? For consumers that currently subscribe to a third-party local or long-distance service, should those services be grandfathered? Or should those consumers be considered to have opted in already? And how should we structure any rule to minimize the impact on single-use services—such as placing an international call through a third-party carrier or receiving a collect call—or other legitimate third-party local or long-distance services that haven't been subject to the same pattern of abuse that we have seen in recent slamming and cramming cases?

22. We seek comment on the costs and benefits of an opt-in process for third-party local and long-distance charges. We believe that blocking such charges would be beneficial to consumers and reduce slamming and cramming significantly. Yet we recognize that changes to carrier billing systems can be costly. We believe many carriers already have the ability to block third-party charges, and seek comment on whether this is correct, and whether there would be any challenges, including billing system and notification changes, for carriers arising from adopting an opt-in mechanism for third-party charges. What are the costs of implementing an opt-in mechanism for third-party charges? For those carriers that do not currently offer the option to block third-party charges, what costs would be associated with making that protection available to consumers and how could the Commission craft rules to minimize those costs and burdens? Would the costs to carriers be mitigated if the timeframe to implement the opt-in mechanism was extended or if the opt-in mechanism was phased in, for example, by requiring an opt-in for new customers only? Do small carriers have unique implementation costs or other burdens, and if so, how should we address those issues?

C. Double-Checking a Switch with the Consumer

23. Rather than requiring an opt in before placing third-party local or long-distance charges on a bill, should the Commission require the executing carrier to confirm or "double-check" whether the consumer wants to switch providers before making the change?[48] Requiring the executing carrier to double-check a change request could be a strong anti-slamming safeguard because it gives the consumer a second opportunity to confirm a switch. If we were to adopt such a requirement, we seek comment on how we could best implement it.

24. Would requiring that the executing carrier obtain the consumer's consent in writing or through the e-mail address of record sufficiently protect consumers? Would mandating that the executing carrier obtain oral consent via a phone call to the consumer at the telephone number of record provide

[47] *See, e.g., Sprint Corporation, Unauthorized Third-Party Billing Charges*, Consent Decree, 30 FCC Rcd 4575 (EB 2015) (charges for monthly ringtone, wallpaper, and text messages providing horoscopes, flirting tips, celebrity gossip, and other information); *Cellco Partnership D/B/A Verizon Wireless, Unauthorized Third-Party Billing Charges*, Consent Decree, 30 FCC Rcd 4590 (EB 2015) (same); *T-Mobile USA, Inc. Unauthorized Third-Party Billing Charges*, Consent Decree, 29 FCC Rcd 15111 (EB 2014) (same); *AT&T Mobility, LLC, Unauthorized Third-Party Billing Charges*, Consent Decree, 29 FCC Rcd 11803 (EB 2014) (same).

[48] 47 CFR § 64.1100(a)-(b).

consumers with more protection from slamming?[49] If the Commission requires the executing provider to confirm a switch request, what should the executing carrier be required to ask (e.g., "the submitting carrier says that you would like to switch to them. Is that correct?")? Are there First Amendment implications related to prescribing the language to be used by the executing carrier? Should the executing carrier have to follow, for all switch requests, the procedures that are presently only in place when a consumer has activated a preferred carrier freeze? Should the double-check by the executing carrier be strictly limited to certain narrow questions with no opportunity for retention marketing? Should there be a deadline by which the double-check must occur?

25. Currently, unless a consumer has activated a preferred carrier freeze, the slamming rules do not allow the executing carrier to verify whether the subscriber wants to change carriers when it receives a preferred carrier change request because of previous Commission concerns that that approach would be expensive, unnecessary, and duplicative of the submitting carrier's verification.[50] At the time those rules were adopted, the local and long distance markets had only been recently opened to competition,[51] and there was concern that an executing carrier might intentionally delay the carrier change or attempt to retain the subscriber.[52] Today, the market for wireline communications services is more established and competitive, and consumers have access to a wide variety of providers and technologies to obtain long-distance services and are more likely to purchase bundles of services from the same provider.[53] In addition, slamming has evolved, and the rules the Commission adopted almost two decades ago have not proven effective in preventing slamming.

26. Given these changes in the marketplace and the continued and evolving problem of slamming faced by consumers, we seek comment on whether the Commission's previous concerns about delays and anti-competitive practices that could arise from a double-check requirement are still valid. If the previous concerns are still well-founded, are those concerns now outweighed by other factors, such as ensuring that consumers are not victimized by the new forms of slamming? In the alternative, does it make sense to adopt more effective regulation of third-party verifiers either by the carrier or by the Commission? What authority does the Commission have to regulate third-party verifiers? We seek comment on whether and how the changed circumstances since 1998 have reduced the danger of anti-competitive behavior, as well as how to structure a double-check mechanism to avoid or limit any competitive harms.

27. In the past, the Commission expressed concern that requiring verification by the executing carrier could be a *de facto* preferred carrier freeze without the consumer's consent that would take control away from consumers.[54] We seek comment on whether the Commission should adopt both a verification by the executing carrier and the default carrier freeze proposed above. Are these processes duplicative and if so, does it make sense to provide consumers with two levels of protection against slamming? Does one option benefit consumers in ways that the other does not? We seek comment on the

[49] We note that a verification call placed by the executing carrier to its subscriber's wireline phone using an artificial or prerecorded voice would not violate the Commission's rules under the Telephone Consumer Protection Act (TCPA). *See* 47 CFR § 64.1200(a)(3)(iii).

[50] *Id.* § 64.1120(a)(2); *Second Report and Order*, 14 FCC Rcd at 1567, para. 98.

[51] The breakup in 1984 of the American Telephone and Telegraph Company (now called AT&T) promoted competition in the long-distance and telephone equipment markets, but not in the local telephone service markets. With the enactment of the Telecommunications Act of 1996, Congress sought to increase competition in local telephone and other telecommunications markets. GAO, Development of Competition in Local Telephone Markets at 3 (2000), http://www.gao.gov/products/GAO/RCED-00-38.

[52] *Second Report and Order*, 14 FCC Rcd at 1567, para. 98.

[53] *See supra* note 43.

[54] *Id.* at 1568-69, paras. 100-01.

costs to consumers, if any, of both options.

28. We also seek comment on the costs and benefits of requiring some form of secondary verification by the executing carrier before switching a consumer's long distance provider. We believe the costs of requiring the executing carrier to perform a simple double-check by phone, email or in writing would be fairly modest, yet the consumer benefit in stopping slamming would be substantial. We seek comment on these views and ask commenters to provide details on costs and benefits. We also seek comment on how we can further mitigate the costs by, for example, extending implementation deadlines of any rules adopted and considering additional specific relief for smaller carriers.

29. *Section 222(b)*. When it previously determined that executing carriers should not verify carrier changes, the Commission expressed concern that such verification would violate Section 222(b) of the Act.[55] Section 222(b) states that a carrier that "receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."[56] The Commission found that the information contained in a submitting carrier's change request is proprietary because the submitting carrier must provide information regarding the consumer's choice of long distance providers to the executing carrier, to which the executing carrier would otherwise not have access, to obtain provisioning of service for the new subscriber. Thus, under the Commission's current rules the executing carrier can only use the information to provide service to the submitting carrier, *i.e.*, changing the subscriber's carrier, and may not attempt to verify that subscriber's decision to change carriers.[57]

30. We note that Section 222(d)(2) provides an exception allowing the carrier to use the customer information "to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to such services."[58] We tentatively conclude that this exception supports our proposal to allow the executing carrier to use the customer information to re-verify that the consumer wants to change providers. We seek comment on this interpretation. We also seek comment on whether a carrier indeed is using the "proprietary information" received from a submitting carrier only for "purposes of providing any telecommunications service" if it uses that information to verify a carrier switch without conducting any additional marketing. We seek comment on whether double-checking by the executing provider could be permissive, rather than required, and whether permissive double-checking would fulfill our policy goals of deterring slamming.

31. If the Commission determines that Section 222 supports requiring executing carriers to confirm a switching request, it is important to note that the exceptions in Section 222(d) that allow the carrier to use the consumer information for a specific purpose would not allow the re-verification process to be used for retention marketing, and any rule the Commission adopts would bar the executing carrier from using the confirmation process for marketing or anticompetitive purposes.[59] We seek comment on

[55] *Second Report and Order*, 14 FCC Rcd at 1567, paras. 98-99.

[56] 47 U.S.C. § 222(b).

[57] *See Second Report and Order*, 14 FCC Rcd at 1568, para 99.

[58] 47 U.S.C. § 222(d).

[59] The Commission has defined "retention marketing" as any marketing to a customer by the consumer's existing provider that occurs while that consumer's number porting request is pending. "Win back marketing" has been defined by the Commission as marketing to the consumer by their previous provider that occurs after the number port has been effectuated. *See, e.g.*, *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14443-44, para. 65 (1999). The Commission found that Verizon's retention marketing violated Section 222(b) because it used the local number portability (LNP) information that it obtained from the submitting carrier to attempt to win back consumers while their LNP request was pending. *See Bright House Networks, LLC, et al., v. Verizon Cal., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704, 10709, 10721, paras. 11, 45 (2008), *upheld, Verizon, Cal., Inc. v. FCC*, No. 08-1234 (D.C. Cir. Feb. 10, 2009).

this view, and on how our rules could best implement such a bar.

D. Other Measures

1. Recording Sales Calls

32. The Commission's current verification rules provide that carriers shall not submit or execute carrier changes without authorization from the subscriber and verification of that authorization.[60] We seek comment on whether submitting carriers that rely on TPVs should be required to record the entire sales call that precedes a switch. We seek comment on how to define a sales call. We believe that a requirement to record all sales calls would deter misrepresentation and aid enforcement if misrepresentation does occur.[61] We seek comment on this view.

33. If we require that sales calls be recorded, should we require the same two-year retention of the recordings as we currently do for TPV calls? Should we also require that sales representatives give the consumer specific information to help them understand the call's purpose, for example: (1) the identity of the company that is calling or on whose behalf the call is being made; (2) that the sales representative is not affiliated with the consumer's current long distance, international, or other toll carrier (if true); and (3) the purpose of the call is to inquire whether the consumer is authorized to make a change to and wishes to change his or her long distance, international, or other toll service from his or her current preferred carrier to the calling carrier. Should our rules also prohibit the sales representative from (1) making any false or misleading statements to the consumer regarding the third-party verifier or the role of the verifier, and (2) instructing the consumer in how he or she should respond to the verifier's questions? In the alternative, we seek comment on whether recording the sales call should be voluntary as opposed to being required and whether a valid recording should serve as an affirmative defense if a slamming complaint was filed against the carrier. Further, are there First Amendment implications related to prescribing specific notifications?

34. We do not believe that requiring the disclosures we discuss above, as well as recording and preserving the sales call, would be costly for providers. At the same time, based on evidence from recent consumer complaints and enforcement actions indicating that sales call misrepresentations are a significant source of slamming, we believe the benefits to consumers are material. We seek comment on these views and ask commenters to provide details on costs and benefits of our proposals. We also seek comment on how we can further mitigate the costs by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

2. Third-Party Verifications

35. Fabricated or falsified TPVs repeatedly form the basis of our enforcement actions, and we thus seek comment on whether inaccurate TPVs are such a significant problem that we should prohibit their use as evidence that a consumer wishes to switch carriers. Would eliminating TPVs as a verification mechanism be effective in preventing slamming and provide substantial benefits to consumers? How would the elimination of TPVs affect legitimate providers' sales efforts? If the TPV is eliminated, are there other mechanisms we should put in place to verify authorization of a carrier change? Should consumers have the option to sign up for service online after the sales call has ended, or to call a designated customer service number to confirm their desire to switch long distance or other toll services? We seek comment on the costs and benefits of elimination of the TPV option. We also seek comment on how we can further mitigate any costs to providers by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

---

[60] 47 CFR § 64.1120(a)(1)(i)-(ii).

[61] Requiring the recording of sales could provide a disincentive for telemarketer misrepresentation and enable better enforcement when consumers complain of misrepresentation by allowing complaints to be matched to specific sales calls. *See, e.g., Birch Communications. Inc.*, Order and Consent Decree, 31 FCC Rcd 13510, 13519 (2016) (Birch instituted a recording process for all sales calls).

36. If we decide to retain TPVs as evidence of a consumer's wish to switch providers, how might we make them more difficult to falsify? Our rules require that TPVs elicit certain information, including the subscriber's identity, that the person on the call is authorized and wishes to make the switch, and the telephone numbers to be switched.[62] Should we update the TPV requirements to require that consumers affirmatively state all telephone numbers to be switched, rather than, as is currently permitted, to allow the third-party verifier to read off the numbers to be switched? Because the third-party verifier must already obtain specific information during the TPV, we do not believe adding this requirement represents a significant additional cost. But we believe it would benefit consumers by making it more difficult to falsify TPVs.

37. Are there other ways to ensure the validity of the TPV? For example, should we require certification of third-party verifiers by either carriers or the Commission? Does the Commission have authority to require such certification? We also seek comment on whether there are any current provisions in our verification requirements that we could update to make the rules clearer and easier to follow. Should we eliminate the requirement that verifiers must get confirmation of each individual service sold (e.g., intraLATA and interLATA service)? Does this requirement make sense in today's bundle-oriented marketplace? We ask commenters to provide details on costs and benefits of implementing these potential rule changes. We also seek comment on how we can further mitigate the costs by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

38. As required by Section 603 of the Regulatory Flexibility Act of 1980, as amended,[63] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *Notice*, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates on the first page of this *Notice*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[64]

B. Initial Paperwork Reduction Act

39. The *Notice* contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (OMB), and other federal agencies to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).[65] If the Commission adopts any modified information collection requirements, it will be submitted to OMB for review under Section 3507(d) of the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[66] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[67]

[62] *See* 47 CFR § 64.1120(c)(3)(iii).

[63] *See* 5 U.S.C. § 603.

[64] *See* 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

[65] Pub. L. No. 104-13.

[66] Pub. L. No. 107-198.

[67] 44 U.S.C. § 3506(c)(4).

C. Other Procedural Matters

1. Ex Parte Rules

40. Permit-But-Disclose. The proceeding this *Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[68] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

2. Filing Requirements

41. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

[68] 47 CFR §§ 1.1200 *et seq.*

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

42. Accessibility Information. 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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

43. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.[69] These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC, 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

44. Additional Information. For additional information on this proceeding, contact Kimberly A. Wild, Kimberly.Wild@fcc.gov or (202) 418-1324, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

45. **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 *Notice of Proposed Rulemaking* **IS ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[69] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

APPENDIX A

Draft Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart K—Changes in Preferred Telecommunications Service Providers

1. Revise § 64.1120 by adding paragraphs (a)(1)(i)(A):

§ 64.1120 Verification of orders for telecommunications services.

(a) ….

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

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

(A) Misrepresentation and/or deception on the sales call is prohibited. Authorization is not valid if there is any misrepresentation and/or deception when making the sales call.

2. Amend § 64.1190(a) to read as follows, delete § 64.1190(c), delete 64.1190(d), and re-number § 64.1190(e) as § 64.1190(c):

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers must activate a preferred carrier freeze on all subscribers' accounts.

(b) All local exchange carriers shall provide freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Deleted.

(d) Deleted.

(c) Procedures for lifting preferred carrier freezes. All local exchange carriers must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the

subscriber's intent to lift the particular freeze.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart Y—Truth-in-Billing Requirements for Common Carriers

1. Add a new § 64.2401(g) to read:

(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. For purposes of this subsection, telephone bill means any bill that contains charges for an interstate telecommunications service.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (*Notice* or NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

2. The *Notice* contains proposals regarding how to strengthen our rules to prevent 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 detailed slamming rules and truth-in-billing rules, thousands of consumers are still being slammed and billed for unauthorized charges. Since, 2010, the Commission's Enforcement Bureau has brought multiple actions against carriers for slamming and cramming violations. These actions have resulted in over $80 million dollars in fines and proposed forfeitures.[3] We believe that adopting the proposals in the NPRM will provide consumers with the additional safeguards they need to protect themselves from this risk.

3. Specifically, the *Notice* seeks comment on whether and, if so, how: (1) we should codify in a rule the prohibition against deceptive marketing and misrepresentations on the sales call;[4] (2) we should codify in a rule the prohibition against placing unauthorized charges on a consumer's telephone bill;[5] (3) we should make preferred carrier freezes the default rather than something the consumer must initiate;[6] (4) we should require consumers to opt in to third-party billing[7] (5) we should require executing

---

[1] 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).

[2] 5 U.S.C. § 603(a).

[3] *See, 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), Forfeiture Order, 30 FCC Rcd 2539 (2015) (*Optic Forfeiture Order*); *GPSPS, Inc*., Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522 (2015), Forfeiture Order, 30 FCC Rcd 7814 (2015); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014) (*Central NAL*), *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*), *Forfeiture Order*, 31 FCC Rcd 10413 (2016); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843 (2013) (*Advantage NAL*), Forfeiture Order, FCC 17-50 (Apr. 25, 2017) (*Advantage Forfeiture Order*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (*CTI NAL*), *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).

[4] *Notice of Proposed Rulemaking,* para. 12 (NPRM).

[5] *Id.* at para. 13.

[6] *Id.* at paras. 14-17.

carriers to make contact with consumers to verify preferred carrier change requests prior to execution;[8] (6) we should require recording and retention of the sales call;[9] and (7) we should modify the verification rules relating to preferred carrier changes to require the consumer to affirmatively list the telephone numbers to be switched in a TPV, or update the TPV requirements to eliminate the requirement to list all services being changed, or eliminate the TPV altogether as an option to verify authorization of a carrier switch.[10]

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this NPRM is 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.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration ("SBA").[14]

1. Wireline Carriers

6. *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

(Continued from previous page)
[7] *Id.* at para. 18-22.

[8] *Id.* at para. 23-31.

[9] *Id.* at para. 32-34.

[10] *Id.* at paras. 35-37.

[11] 5 U.S.C. § 603(b)(3).

[12] 5 U.S.C. § 601(6).

[13] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 5 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."

[14] 15 U.S.C. § 632.

included in this industry."[15] Under that size standard, such a business is small if it has 1,500 or fewer employees.[16] 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.[17] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

7. *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."[18] Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] 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.[20] 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.

8. 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."[21] 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.[22] 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.

[15] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories"; http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[16] 13 CFR § 121.201, NAICS code 517110.

[17] 2012 U.S. Economic Census, NAICs Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[18] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories"; http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[19] 13 CFR § 121.201, NAICS code 517110.

[20] 2012 U.S. Economic Census, NAICs Code 517110, at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[21] 5 U.S.C. § 601(3).

[22] 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).

9. *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 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."[23] Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] 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.[25] Consequently, the Commission estimates that the majority of IXCs are small entities.

10. *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, prepaid 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."[26] Under that size standard, such a business is small if it has 1,500 or fewer employees.[27] 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.[28] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small.

2. Wireless Carriers

11. *Wireless Telecommunications Carriers (except Satellite*). Since 2007, the Census

[23] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories" (Feb. 23, 2016) http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[24] 13 CFR § 121.201, NAICS code 517110.

[25] 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.

[26] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Categories" (Feb. 23, 2016) http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[27] 13 CFR § 121.201, NAICS code 517110.

[28] 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.

Bureau has placed wireless firms within this new, broad, economic census category.[29] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[30] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.[31] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[32] Of this total, an estimated 261 have 1,500 or fewer employees.[33] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

3. Resellers

12. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

13. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. The *Notice* contains proposals regarding how to strengthen our rules to prevent slamming and cramming. Until the proposed rules are defined in full, it is not possible to predict with certainty whether the costs of compliance will be proportionate between small and large providers. We seek to minimize the burden associated with reporting, recordkeeping, and other compliance requirements for the proposed rules.

15. The proposals under consideration could result in additional costs to regulated entities. These proposals may necessitate that some carriers create new processes or make changes to their existing processes which would impose some additional costs to carriers. The NPRM proposes to require: reverification by the executing carrier; a default carrier freeze and procedures to lift the freeze; recording of sales calls and retention of such recordings for two years; certain information be conveyed during the

---

[29] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"(Aug. 17, 2016) http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012%20NAICS%20Search.

[30] 13 CFR § 121.201, NAICS code 517210 (2012 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[31] 2012 U.S. Economic Census, NAICs Code 517210 (Jan. 08,2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[32] *Trends in Telephone Service*, tbl. 5.3.

[33] *Id.*

sales call; implementation of new marketing methods; and an explicit opt-in decision for third-party billing. These proposals may require changes to certain carrier processes. However, some carriers may already be in compliance with some of these requirements and therefore, no additional compliance efforts will be required.

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

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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.[34]

17. The Commission proposes rules to eliminate slamming and cramming on consumers' bills. The Commission believes that any economic burden these proposed rules may have on carriers is outweighed by the considerable benefits to consumers. Consumers are currently being charged for services they never authorized and in some instances never received. In addition, consumers must expend significant time and energy trying to recoup these costs and get back to the provider of their choice. In the NPRM the Commission specifically asks how to minimize the economic impact of our proposals on small entities. For instance, we seek comment on the specific costs of the measures we discuss in the NPRM, and ways we might mitigate any implementation costs, including by extending implementation deadlines for small carriers. We also particularly ask whether smaller carriers face unique implementation costs and, if so, how the Commission might address those concerns. In addition, for example, we seek comment on alternatives for how a carrier should obtain a consumer's decision to opt in to third-party charges, if the Commission decides to adopt an "opt-in" approach. Finally, we seek comment on the overall economic impact these proposed rules may have on carriers because we seek to minimize all costs associated with these proposed rules.

18. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.

[34] 5 U.S.C. § 603(c).