

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its initial comments in response to the Commission’s *Notice of Proposed Rulemaking*, FCC 17-91, released July 14, 2017 (“*NPRM*”), in this proceeding.

WTA and its rural local exchange carrier (“RLEC”) members are very interested in helping the Commission to deter the slamming and cramming practices that defraud their rural customers and disrupt telecommunications services. WTA urges the Commission to consider additional consumer protection steps that will discourage slamming and cramming without impeding competition or imposing excessive and unnecessary costs upon local exchange carriers and interexchange carriers. With respect to slamming, WTA believes that a combination of non-mandatory preferred interexchange carrier (“PIC”) freezes and permissive double-checking to confirm PIC change orders constitutes the most effective and efficient approach to minimize slamming in RLEC service areas. As to cramming, WTA continues to support the existing “truth-in-billing” rules and foresees more complex problems in the future, but believes that the current proposal to allow individual customers to opt out of third party toll billing is not necessary and would destroy any remaining economies and efficiencies in the declining business involving billing and collection for third party toll services.

I. WTA – Advocates for Rural Broadband

WTA is a national trade association representing approximately 340 rural telecommunications providers that offer voice, broadband and video-related services in Rural America. WTA members are generally small RLECs that serve some of the most rugged, remote and/or sparsely populated areas of the United States. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. WTA members are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

II. WTA Supports Effective and Efficient Anti-Slamming Rules

A. Misrepresentation

WTA and its members strongly support the existing Commission rulings that misrepresentations and other deceptions on telecommunications sales calls are unjust and unreasonable practices under Section 201(b) of the Communications Act. They also strongly endorse the proposed new Commission rule that would expressly ban misrepresentations on sales calls and specify that any misrepresentation or deception on a sales call invalidates any subsequent verification of a carrier change authorization. As the local telecommunications businesses that most often must deal with and resolve the customer complaints and service disruptions caused by slamming, RLECs favor the adoption and enforcement of tough misrepresentation prohibitions and similar rules that will discourage and reduce slamming.

The critical question is how such an explicit misrepresentation ban can effectively and equitably be enforced. WTA does not believe that incumbent local exchange carriers (“ILECs”) should be tasked with the responsibility for investigating misrepresentation charges or for deciding whether or how to enforce misrepresentation penalties. ILECs have neither the

jurisdiction nor the immunity protections of judicial authorities, and should not be placed in positions where their determinations regarding the validity of misrepresentation claims can produce liability to customers for allowing unwanted PIC changes to occur or liability to interexchange carriers (“IXC”) for blocking valid PIC change orders.

It is the experience of WTA members that many slamming claims tend to be resolved without litigation – generally by switching the customers back to their previous IXCs and cancelling most or all unwarranted charges. Where slamming disputes cannot readily be resolved, the Commission’s proposal to require submitting carriers that rely upon third-party verifications (“TPVs”) to record and retain the entire sales call preceding a switch should be adopted. A recording of the entire sales call constitutes the best evidence for determining whether false or misleading sales representations were made on a sales call and/or whether it was deceptively edited, and also comprises the best device for deterring such behavior. WTA notes that a requirement that such recordings be retained for two years appears excessive, for most instances of slamming are discovered by customers upon receipt of their first (and generally no more than their second or third) bill after an unauthorized PIC change. If a customer does not discover or complain about a PIC change for two years, the new IXC has a reasonable claim that the customer at least implicitly consented to the change and accepted the benefits of the IXC’s services. Moreover, maintaining, indexing and combing through two years’ worth of recordings for a particular disputed sales call can be an unduly difficult, expensive and lengthy task.

B. PIC Freezes and Double-Checking of PIC Change Orders

WTA and its members believe that PIC freezes comprise the most effective way of preventing slamming and avoiding service disruptions to their rural customers. Where a PIC freeze is in place, an unscrupulous IXC or sales agent cannot manipulate, deceive or pressure an

elderly household resident or a child or a non-English speaking person into making a PIC change (or speaking words that are later edited to sound like a PIC change authorization) that the actual account holder does not want. Rather, a PIC freeze will require the person or persons specifically authorized to make service changes for a customer to contact the ILEC directly, provide proper identification, arrange for the temporary or permanent lifting of the customer's PIC freeze, and designate a new PIC. The PIC freeze has been a very effective safeguard against fraud and misrepresentation by toll service marketers, as well as a way to discover and correct simple mistakes that otherwise would have resulted in unwanted PIC changes.

As valuable and effective as PIC freezes have proven to be, WTA would counsel the Commission against mandating automatic PIC freezes by default. WTA has not taken any customer surveys on the matter and does not know what proportions of urban or rural customers nationwide would oppose a default PIC freeze, or otherwise reject a PIC freeze if one was offered to them. However, WTA presumes that at least a significant minority of customers would demand the capability to change their PICs immediately without having to lift PIC freezes, even if this made them more vulnerable to slamming actions. When such customers find that an unordered, default PIC freeze is frustrating their desire to make a PIC change, ILECs will bear the brunt of their anger and complaints.

Rather than mandating PIC freezes by default, the Commission should recommend PIC freezes on its website and elsewhere as useful devices to protect consumers against slamming, and encourage ILECs to advertise the availability and advantages of their PIC freeze offerings. WTA believes that rural and other customers are perfectly capable of weighing the advantages and disadvantages of PIC freezes, and making their own decisions whether to order them or not.

Where a customer does not elect a PIC freeze, WTA believes that RLECs and other executing carriers should expressly be permitted to confirm or “double-check” whether their customers want to switch providers before making PIC changes. RLECs know virtually all of their customers, and have long asserted that a lot of slamming problems and service disruptions could be avoided if they were allowed just to call their customers and verify PIC change orders. WTA understands that “double-check” calls may not be as useful in urban areas or for large carriers – that is, in situations where the executing carrier does not know, and is not likely to be known by, many customers. One way to deal with these different circumstances is to have the “double-check” calls be explicitly allowed, but not mandated. In rural areas where many customers are member-owners of the local telephone cooperative, or are relatives, neighbors and associates of the managers and employees of the local commercial RLEC, “double-check” calls can be very effective in preventing slams and in avoiding hours of wasted customer and RLEC time to unravel unwanted PIC changes, clear up billing issues, and restore the desired IXC services.

If “double-check” calls are permitted, the RLEC or other executing carrier should be strictly prohibited from engaging in retention marketing where the PIC change involves a switch from the executing carrier’s resold toll service. The “double-check” call should be limited so as to comprise nothing more than an identification of the caller, a request to speak with the person or persons identified in the executing company’s records as authorized to make service changes, and a simple question like: “Has your household authorized a change in its preferred long distance toll service from ABC Company to XYZ Company within the past _____ (relevant time period)?”

If “double-check” calls are permitted, they should also be subject to certain reasonable restrictions to protect the customer, the submitting carrier, and the executing carrier. For example, in order to protect the competitive rights of the submitting IXC as well as the right of the customer to change his or her PIC, any and all permitted “double-check” calls should be made within a reasonable and limited time period to be specified by the Commission after receipt of the PIC change request by the executing carrier. In order to limit the responsibilities and liability of the executing carrier, it need not be required to make more than a reasonable and limited number of attempts to reach the customer by telephone, voicemail and/or email; and need not wait more than a reasonable and limited time period after the last such attempted contact to make the PIC change if it has not yet received a response from the customer.

III. Cramming and Third Party Billing

WTA and its members have long supported the Commission’s “truth-in-billing” rules, and agree that unauthorized third party charges on consumer telecommunications bills comprise “unjust and unreasonable practices” in violation of Section 201(b) of the Communications Act.

Decades ago, most RLECs had agreements with AT&T and other large long distance toll service providers to bill and collect their toll charges by including them on local exchange telephone service bills. Today, most of those billing and collection arrangements have been terminated as the larger IXCs have taken over their own billing and collection operations, or farmed them out to national or regional agencies. However, whereas third party billing has become far less prevalent in the RLEC industry, it may grow and evolve in other sectors of the telecommunications industry. For example, smart phones are being employed to enter into a growing variety of transactions such as paying parking meter charges. Whereas most such transactions today are paid by credit card via mobile service applications, it is quite possible that

some carriers will at least explore the business case for billing and collecting for some third party services directly on smart phone monthly service bills. These changes, if they materialize, are likely to require future revisions to the Commission's "truth-in-billing" rules as unforeseen new issues and problems arise.

With respect to the "third party charges for local and long distance service" raised in the *NPRM*, WTA members do not generally bill and collect for the third party local telecommunications services that compete with them. And given the movement of IXCs toward the billing and collection of their own toll charges, only a declining number of RLECs continues to bill and collect third party charges for long distance services.

A much more significant trend in recent years is for IXCs to decline to offer long distance toll services in small or remote rural exchanges that are unlikely to generate substantial toll profits. Many WTA members and other RLECs have become resellers of long distance toll services so that their local exchange service customers will have at least one traditional wireline toll service available to them. Whether such resold services are offered by the RLEC or its toll service affiliate, and whether they are offered on a bundled or separate basis, they are not third party charges and are billed and collected on the underlying local exchange service bills.

In those declining instances where WTA members still have billing and collection arrangements in place with third party IXCs, allowing individual customers to determine on an opt-in basis whether the third party IXC's toll charges may be included on their monthly local exchange service bills would pretty much destroy any remaining economic or efficiency basis for the arrangement. At the present time, customers may dispute particular third party IXC toll charges on their local exchange service bills, and WTA members work with customers and the third party IXCs to resolve such disputes pursuant to the terms of the applicable billing and

collection agreements. However, if individual customers were permitted to opt out of receiving third party toll charges on their local exchange service bills, third party IXCs would have virtually no cost minimization or other incentives to separate out their PIC customers ILEC-by-ILEC (or RLEC-by-RLEC), and bill some customers directly while continuing to have the ILEC or RLEC bill and collect for others. Likewise, RLECs and other ILECs would find it much more complicated and expensive to re-configure their billing systems to separate out and distinguish between those customers of each third party IXC that are billed directly by the IXC and those for whom the ILEC continues to bill and collect. The end result is virtually certain to be an acceleration of the already substantial decline of third party billing and collection arrangements between ILECs and IXCs.

IV. VoIP Providers Should Be Governed by Slamming and Cramming Rules

Interconnected Voice over Internet Protocol (“VoIP”) service providers long have been deemed to provide voice services that are substantially equivalent to, and competitive with, the services provided by traditional wireline ILECs and IXCs. Whereas their full regulatory status has not yet been determined by the Commission, interconnected VoIP services have been subjected to many of the same regulatory requirements as traditional ILECs and IXCs, including customer proprietary network information (“CPNI”), E911, Communications Assistance for Law Enforcement Act (“CALEA”) and Universal Service Fund (“USF”) contribution requirements. Both consumer protection goals and the need for a level competitive playing field require that interconnected VoIP providers should be subject to all existing and future slamming and cramming regulations as well.

V. Conclusion

WTA supports the Commission's efforts to discourage slamming and cramming practices without impeding competition or imposing excessive and unnecessary costs upon carriers. With respect to slamming, WTA believes that a combination of non-mandatory PIC freezes and permissive double-checking to confirm PIC change orders constitutes the most effective and efficient way to minimize slamming in RLEC service areas. As to cramming, WTA continues to support the existing "truth-in-billing" rules and foresees more complex problems in the future, but believes that the current proposal to allow individual customers to opt out of third party toll billing arrangements is not necessary and would destroy any remaining economies and efficiencies produced by the declining number of billing and collection arrangements between ILECs and IXC's.

Respectfully submitted,
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