

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

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

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking* seeking comment on proposed rules to protect consumers from slamming and cramming.¹

I. DISCUSSION

INCOMPAS, the Internet and competitive networks association, represents small- and mid-sized local exchange carriers and new entrants that provide communications services to residential and enterprise customers in urban, suburban, and rural areas. Our members, which are typically the second or third entrant into a market, are able to distinguish themselves by providing outstanding value and customer service and, as such, are always actively seeking to deter slamming and cramming tactics that might otherwise upset the provider’s relationship with its customers. INCOMPAS supports the Commission’s efforts to protect consumers and target carriers using fraudulent methods to verify carrier changes or add unauthorized charges onto a consumer’s bill.

¹ *Protecting Consumers From Unauthorized Carrier Changes and Related Unauthorized Charges*, Notice of Proposed Rulemaking, CG Docket No. 17-169 (rel. July 14, 2017) (“NPRM”).

However, like others on the record, INCOMPAS believes that the proposals in the instant proceeding may “significantly harm competition and competitive choice for all-distance services”² and would encourage the Commission to reject its own proposals to (1) make preferred interexchange carrier (“PIC”) freezes mandatory for all accounts (as opposed to requiring consumers to affirmatively opt-in); and (2) require an executing carrier to contact a customer and “double check” that the customer wants to change providers. These new restrictions will likely have only a negligible impact on slamming and cramming, but likely will significantly impact the market, skewing competition to favor incumbents, thereby harming the incentive for competitive deployment and service—in contravention of the intent of the Act.³ Further, imposing these new regulatory obligations on carriers⁴ will be costly to implement, and investment that would be best spent in deploying and upgrading competitive broadband networks will be redirected to comply with new regulations that will do little to deter the problem the Commission seeks to solve.

First, the Commission proposes to deter slamming by permitting local exchange carriers to automatically freeze a customer’s choice of wireline providers. Like a majority of participants in the proceeding, INCOMPAS encourages the Commission to reject this proposal and not mandate a PIC freeze. INCOMPAS agrees with CALTEL that a default freeze rule would be “unnecessary, costly, and would pose a significant harm to competition and competitive

² See Comments of the California Association of Competitive Telecommunications Companies, CG Docket No. 17-169 (filed September 13, 2017), at 2 (“CALTEL Comments”).

³ See 47 USC § 151.

⁴ For purposes of this reply comment, INCOMPAS defines “carriers” as all providers of voice services, including TDM, CMRS, and interconnected VoIP providers.

choice.”⁵ A default freeze would require competitive providers to direct valuable resources to establishing a freeze option (as well as procedures to lift a default freeze) as opposed to using those resources to further establish and deploy their broadband networks. These costs would be even greater for those smaller INCOMPAS members that do not currently offer their customers freezes and would force companies least able to bear additional burdens to support a new Commission mandate.⁶

Furthermore, a default freeze rule would make it incredibly difficult for those customers who wish to change long distance and all-distance carriers to do so quickly and efficiently. Indeed, as noted by NCTA, a default freeze would require a customer seeking to change services “to contact their existing carrier to lift a freeze, which they did not request and may not want.”⁷ INCOMPAS agrees that customers may be confused and frustrated about an additional step they will need to take to switch providers. In fact, despite the Commission’s efforts to put more control in the hands of consumers, the proposed approach would appear to take the control away from them by imposing additional burdens they may not even want. Even those, like the WTA, who support PIC freezes as “the most effective way of preventing slamming” are not asking the

⁵ CALTEL Comments at 3.

⁶ NTCA—The Rural Broadband Association rightfully points out in its comment that the NPRM is unclear as to what new rules may be proposed as a result of this proceeding, making it “not possible to predict with certainty whether the costs of compliance will be proportionate between large and small providers. See Comments and Initial Regulatory Flexibility Analysis Response of NTCA—The Rural Broadband Association, CG Docket No. 17-169 (filed September 13, 2017), at 5 (quoting the NPRM’s Initial Regulatory Flexibility Analysis at ¶ 14).

⁷ See Comments of NCTA—The Internet & Television Association, CG Docket No. 17-169 (filed Sep. 13, 2017), at 2 (“NCTA Comments”).

Commission to mandate these freezes by default. Instead, they are supporting an approach that would see the Commission encourage carriers to advertise their “availability and advantages.”⁸

With respect to the Commission’s proposal to require an executing carrier to confirm or “double-check” whether a consumer wants to switch providers, the Commission’s argument for proposing new rules rests on the assumption that “changes in the marketplace” have invalidated previous concerns “that an executing carrier might intentionally delay the carrier change or attempt to retain the subscriber.”⁹ Like CALTEL and NCTA, INCOMPAS urges the Commission to reject such a conclusion.¹⁰ INCOMPAS believes that the rigorous analysis conducted by the Commission in its previous proceedings on how the “double check” could be used to anti-competitive effect is still well-founded today, and therefore, the Commission’s current policy should be preserved.¹¹

A “double check” requirement would give an executing carrier license to attempt to aggressively win-back customers and delay a change request as it attempts to retain a customer that has already made a decision to change service providers. As CALTEL explains in its

⁸ Comments of WTA—Advocates for Rural Broadband, CG Docket No. 17-169 (filed Sep. 13, 2017), at 4.

⁹ NPRM at ¶¶ 25, 24.

¹⁰ See CALTEL Comment at 6-7 (arguing that the “double check” would result in aggressive retention marketing tactics by the executing carrier); see also NCTA Comment at 4 (indicating that the “double check” is “a recipe for anticompetitive delays and tactics on the part of the original carrier”).

¹¹ 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, 1568 ¶ 99 (1998) (“Second Report and Order”).

comments, retention marketing tactics are already more aggressive than ever before, and further requirements that a customer must talk to their current provider to exercise their right to switch providers will only lead to further tactics that likely will become a barrier for consumers to move to a new service provider. Moreover, there is no record support that requiring carriers to “double check” will prevent slamming *without* impeding competition or impairing the ability of the consumer to switch providers.¹²

In addition to the threat of retention marketing to the honest efforts of competitive providers to gain new customers, NCTA points out that this kind of independent reverification requirement could have other “adverse effects on competition” and highlights the Commission’s own assessment that “executing carriers would have both the incentive and the ability to delay or deny carrier changes, using verification as an excuse.”¹³ Taking these competitive concerns together, it is unlikely that requiring an executing carrier to confirm whether a consumer wants to switch providers will have the Commission’s intended effect of deterring slamming *without* unnecessarily impeding competition. As such, INCOMPAS urges the Commission to reject this requirement and retain its current policy which is intended to ensure that competition is not adversely affected by requirements that will make it unduly burdensome for customers to exercise their right to change providers.

II. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to reject its current proposals for deterring slamming and cramming in these two specific areas. Though well intentioned, these proposals would impede competition and impair the ability of consumers to

¹² See CALTEL Comments at 6.

¹³ NCTA Comments at 4 (quoting the Second Report and Order at 1568).

switch providers, while doing little to prevent fraudulent carriers from carrying out unauthorized carrier changes.

Respectfully submitted,

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