Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS AND INITIAL REGULATORY FLEXIBILITY ANALYSIS RESPONSE OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2] and Initial Regulatory Flexibility Analysis ("IRFA")[3] in the above-captioned proceeding. In the NPRM, the Federal Communications Commission (the "Commission") proposes rules that would codify prohibitions against making misrepresentations to consumers[4] and prohibit the placement of unauthorized charges on telephone bills.[5] The remainder of the NPRM does not propose specific rules, but asks broad questions, more suited to a Notice of Inquiry ("NOI"), about possible methods to

[1] NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA's service provider members are full service rural local exchange carriers ("RLECs") and broadband providers. NTCA holds a seat on the North American Numbering Council, a Commission advisory body.
[2] *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Notice of Proposed Rulemaking, FCC 17-91 (rel. Jul. 14, 2017).
[3] *Id.*, IRFA, Appendix B.
[4] NPRM, ¶ 12.
[5] *Id.*, ¶ 13.

further protect consumers from making unauthorized carrier changes ("slamming") or placing unauthorized charges on bills ("cramming").[6]

As integral members of the small communities they serve, NTCA members are intimately aware of the significant effects misrepresentations or the imposition of unauthorized charges can have on consumers. Indeed, even if the local carrier is not involved, customers frequently, and understandably, turn to their local provider for assistance, which typically provide whatever aid they can. NTCA is therefore supportive of new rules with respect to such indefensible practices.

Nonetheless, the other proposals found in the NPRM are framed in ways more suited to an NOI. They are vague, lack specificity, are unsupported by any data, and could generate costs that the NPRM admits are undeterminable. Furthermore, the Initial Regulatory Flexibility Analysis ("IRFA") is unusually and remarkably deficient. Therefore, none of these proposals should be adopted, unless and until a further NPRM and IFRA that examines specific proposals, and presents valid cost estimates upon which the public may comment, are executed. At the very least, should any of the other proposals in the NPRM be adopted, small carriers should be exempted due to the lack of any cost estimates, specifics, or data of any kind whatsoever.

II. PROHIBITIONS AGAINST MISREPRESENTATIONS TO CONSUMERS AND THE DELIBERATE IMPOSITION OF UNAUTHORIZED CHARGES ARE REASONABLE AND DESIRABLE

The NPRM describes circumstances where various parties used deception and misrepresentation in order to obtain consumer information then used to engage in slamming or cramming.[7] Therefore, the NPRM proposes[8] specific language[9] to codify prohibitions against these anti-consumer practices. In general, NTCA supports these proposals, as they are in keeping

[6] *Id.*, ¶¶ 1-2.
[7] *Id.*, ¶¶ 5-10.
[8] *Id.*, ¶¶ 12-13.
[9] *Id.*, Appendix A.

with RLECs' longstanding operational procedures, customer-oriented service, and common sense.

The NPRM also asks if these prohibitions should apply to Commercial Mobile Radio Service ("CMRS"), pre-paid wireless, or interconnected Voice over Internet Protocol ("VoIP") services.[10] NTCA supports application of these logical prohibitions on an equitable basis. Regardless of technology or business model, misrepresentation and the deliberate imposition of unauthorized charges should not occur in today's communications marketplace.

III. THE NPRM'S REMAINING PROPOSALS REGARDING DEFAULT PREFERRED INTEREXCHANGE CARRIER FREEZES, PROHIBITIONS ON THIRD-PARTY BILLING, DOUBLE CHECKING CHANGE REQUESTS, RECORDING SALES CALLS, AND THIRD PARTY VERIFICATION ARE TOO VAGUE, NON-SPECIFIC, AND LACKING IN DATA TO APPLY TO SMALL CARRIERS

The NPRM contemplates a number of additional methods to combat slamming and cramming. While well-intentioned, none of these proposals is specific, nor is there any corresponding draft rule language in the NPRM. Furthermore, neither the NPRM nor the accompanying IRFA offer even the roughest of cost estimates upon which interested parties might comment.

In particular, the NPRM considers:

- Making preferred carrier freezes the default rather than something the consumer must initiate;[11]
- Requiring consumers to opt in to third-party billing; [12]
- Requiring executing carriers to contact consumers to verify preferred carrier change requests prior to execution;[13]
- Requiring recording and retention of sales calls;[14] and

[10] NPRM, ¶¶ 12-13.
[11] *Id.*, ¶¶ 14-16.
[12] *Id.*, ¶¶ 17-21.
[13] *Id.*, ¶¶ 22-29.

- Modifying the verification rules relating to preferred carrier changes to require the consumer to affirmatively list the telephone numbers to be switched in a third-party verification ("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.[15]

When examining these issues, the NPRM neglects to offer specific proposals, instead asking vague, high-level questions regarding impacts and operations that would be suitable in an NOI, yet lack the specifics appropriate for an NPRM.[16]

As an example, when considering requiring consumers to opt in to third-party billing, the NPRM asks:

> 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 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?[17]

While these are legitimate questions, this example demonstrates that the Commission is not seeking comment on proposed rules (other than the prohibitions on misrepresentations and imposition of unauthorized charges). In fact, the NPRM indicates that the Commission is not sure what, if any, new rules it may consider imposing as a result of this proceeding.

This is a critical point, as instead of providing cost estimates for proposed rules upon which interested parties may comment, the NPRM repeatedly asks commenting parties to

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[14] *Id.*, ¶¶ 30-32.
[15] *Id.*, ¶¶ 33-35.
[16] *See, e.g.*, *Id.* ¶ 15, ¶ 18, ¶ 19; ¶ 20; ¶¶ 23-25; ¶¶ 27-29; ¶¶ 30-31; ¶¶ 33-35.
[17] *Id.*, ¶ 19.

provide cost estimates.[18] Not only does this turn the Commission's Regulatory Flexibility Act responsibilities on its head,[19] but the constant presence of variables, unknowns, and potential different avenues the rules may take renders it impossible for either commenting parties or regulators to estimate what costs the new rules might impose. The IRFA itself alludes to this situation when it states, "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."[20]

While recognizing the Commission's desire to protect consumers, due to these deficiencies, none of the proposals listed in this section should result in rules at this time that would apply to small carriers. At most, any new rules should be permissive for small carriers, as it is not possible to determine their practicality in each case based on the vagueness of the NPRM. Should the imposition of non-voluntary new procedures or rules on small carriers be deemed necessary, the Commission should issue a Further Notice of Proposed Rulemaking that incorporates data and provides cost estimates and specific rule proposals upon which parties may comment. As discussed further below, a Further Notice should also include a properly-executed Initial Regulatory Flexibility Analysis.

IV. THE INITIAL REGULATORY FLEXIBILITY ANALYSIS IS DEFICIENT AND MUST BE RE-ISSUED PRIOR TO THE ADOPTION OF FURTHER RULES FOR SMALL CARRIERS IN THIS PROCEEDING

As discussed above, aside from the proposed prohibitions on misrepresentation and the deliberate imposition of unauthorized charges, the NPRM is unclear on what, if any, specific rules might be adopted, or how they might operate. As the IRFA itself acknowledges, such

[18] *Id.*, ¶ 16, ¶ 21, ¶¶ 25-26, ¶ 32, ¶¶ 33-35; IRFA ¶ 17.
[19] *See* Section IV, *infra*.
[20] IRFA, ¶ 14.

undefined rule proposals make it impossible to estimate potential costs.[21] As most of the NPRM suffers from a lack of specific proposals, it is unsurprising that neither it nor the IRFA can provide any data or cost estimates upon which parties may comment.

Therefore, it is all the more shocking when, in the complete absence of data, cost estimates, or even coherent rule proposals, the IRFA declares, with a complete lack of support, that the "Commission *believes* that any economic burden these proposed rules may have on carriers is outweighed by the considerable benefits to consumers."[22] While understanding that the root of this sentiment lies in a worthy desire to protect consumers, the statement in this context marks the antithesis of an "analysis." Rather, it is a baseless profession of faith, and no substitute for a data-driven examination. Thus, the IRFA goes beyond mere neglect of duties under the Regulatory Flexibility Act,[23] and this must be rectified as a matter of proper legal and administrative procedure.

The Office of Advocacy of the U.S. Small Business Administration ("SBA") has, among others, reminded this agency of these duties on numerous occasions. For example, barely a year ago, SBA noted:

> "Section 607 of the [Regulatory Flexibility Act] requires agencies to develop a quantitative analysis of the effects of a rule and its alternatives using available data. If quantification is not practicable or reliable, agencies may provide general descriptive statements regarding the rule's effects." [24]

Yet because the extant NPRM for the most part lacked specific rule proposals, the IRFA could not even describe compliance requirements. It simply sought comment on compliance costs

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[21] *Id.*
[22] IRFA, ¶ 17 (emphasis added).
[23] *See, e.g.*, *Independent Regulatory Agency Compliance with the Regulatory Flexibility Act*, Microeconomic Applications, Inc. for U.S. Small Business Administration Office of Advocacy (rel. May, 2013) at 34-59, available at http://www.sba.gov/sites/default/files/rs410tot.pdf.
[24] *See, e.g.*, SBA Reply Comments, Response to Initial Regulatory Flexibility Analysis; *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106 (fil. Jun. 27, 2016), at 2-3 (citing 5 U.S.C. § 607).

(while as noted above, admitting that estimates were impossible due to lack of specificity), "without making any attempt to explain what kinds of costs small … providers might incur in order to comply, and without any discussion of how those costs might be disproportionately burdensome for small entities."[25]

While this kind of deficiency is, unfortunately, not unusual for an IRFA, the unsupported declaration that the Commission "believes" benefits would outweigh costs takes things a step further. The IRFA appears to impermissibly put the onus on small carriers to prove the Commission's faith to be incorrect – even as the Commission itself cannot describe the effects of rules it "believes" will not be unduly costly. Therefore, the Commission should adopt no new rules for small carriers beyond prohibitions against misrepresentations to consumers or the deliberate imposition of unauthorized charges, without a complete Further Notice of Proposed Rulemaking and proper IRFA. In the event any such rules are adopted, they should be explicitly permissive for small RLECs.

V. CONCLUSION

RLECs are integral parts of the communities they serve. They not only see firsthand the damage that slamming and cramming cause consumers, but they are commonly the first resource consumers turns to for help in mitigating this damage. Thus, NTCA fully supports the NPRM's proposal to codify equitable prohibitions against misrepresentation and the deliberate imposition of unauthorized charges on consumer bills.

The NPRM's remaining proposals regarding default preferred interexchange carrier freezes, prohibitions against third-party billing, double checking of carrier change requests, recording sales calls, and third party verification raise valid questions but do not contain specific language or cost estimates upon which parties may comment. Similarly, the NPRM's IRFA fails

[25] *Id.*

to describe specifics, costs, or alternatives in any meaningful way. Therefore, the remaining proposals should not be adopted with regard to small carriers. Until such time as a comprehensive Further Notice of Proposed Rulemaking and properly conducted IRFA may be executed, any of these rules that may be issued should be permissive and not mandatory for small carriers.

Respectfully submitted,

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