make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl's telephone number is (617) 918–1657; email address: *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this issue of the **Federal Register**.

Dated: July 24, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–17022 Filed 8–11–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–169; FCC 17–91]

Protecting Consumers From Unauthorized Carrier Changes and Related Unauthorized Charges

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend its rules to prohibit carriers from misrepresenting themselves when placing telemarketing sales calls to consumers and placing unauthorized charges on their phone bills. The Commission seeks comment on ways to strengthen its rules to protect consumers from slamming and cramming and proposes to codify a rule prohibiting misrepresentations on carrier telemarketing calls to consumers that often precede a carrier switch, and proposes to codify a rule against cramming. The intended effect of this action is to prevent unscrupulous carriers from targeting vulnerable populations from committing fraud either on sales calls or when ''verifying'' a consumer switch.

DATES: Comments are due on or before September 13, 2017, and reply comments are due on or before October 13, 2017.

ADDRESSES: You may submit comments identified by CG Docket No. 17–169 and/or FCC Number 17–91, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: *http://apps.fcc.gov/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 17–169.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Wild, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418–1324, email: *Kimberly.Wild@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Rules and Policies Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges, Notice of Proposed Rulemaking,* document FCC 17–91, adopted on July 13, 2017, released on July 14, 2017. The full text of document FCC 17–91 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. A copy of document FCC 17–91 and any subsequently filed documents in this matter may also be found by searching ECFS at: *http://apps.fcc.gov/ecfs/* (insert CG Docket No. 17–169 into the Proceeding block).

Pursuant to 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 ECFS. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by 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.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations

and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to: *fcc504@fcc.gov* or call CGB at: (202) 418–0530 (voice), or (202) 418–0432 (TTY). Document FCC 17–91 can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/document/fcc-proposes-rules-aid-investigation-threatening-calls.*

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 17–91 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act (PRA). Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198, 116 Stat. 729; 44 U.S.C. 3506(c)(4).

Synopsis

1. All too often, unscrupulous carriers target Americans, including those within vulnerable populations like the elderly, recent immigrants, small businesses, and non-English 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 document FCC 17–91, the Commission seeks comment on additional steps to protect consumers from slamming and cramming. The Commission seeks to strengthen its ability to take action against slammers and crammers, and deter carriers from slamming and cramming in the first place, without impeding competition or impairing the ability of consumers to switch providers.

Background

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.'' 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. 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. Finally, the Commission adopted rules for calculating slamming carrier liability.

Continuing Problem

4. Notwithstanding the Commission's rulemaking and enforcement actions to date, slamming and cramming continue to be a problem. Slammers, or would-be slammers, have also crammed consumers as part of their fraud schemes. The Commission is cognizant that it must balance the benefits of the proposals in document FCC 17–91 against the burden they may place on legitimate carrier changes and third-party charges. The steps the Commission seeks comment on today to strengthen its rules seek to address the evolving practices of bad actors with respect to slamming and cramming, while not impeding competition or impairing the ability of consumers to switch providers.

Notice of Proposed Rulemaking

5. In document FCC 17–91, the Commission seeks comment on ways to strengthen its rules to protect consumers from slamming and cramming. The Commission believes its legal authority stems directly from sections 201(b) and 258 of the Act. The Commission has based slamming and cramming rules on these provisions of the Act in the past. The Commission notes that section 258 of the Act is clear that carriers cannot execute switches unless they do so ''in accordance with such verification procedures as the Commission shall prescribe.'' The Commission believes the anti-slamming steps it proposes here are ''verification procedures'' consistent with the authority specified in section 258 of the Act. Similarly, the Commission has found that both sections 201(b) and 258 of the Act support its truth-in-billing rules, including those to prevent cramming on consumers' bills. The Commission seeks comment on the nature and scope of its authority to adopt the rules it proposes in document FCC 17–91.

Banning Misrepresentation and Unauthorized Charges

6. The Commission's recent enforcement actions reveal that a major source of slamming is deception in the sales calls. The Commission seeks 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. 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. Although the Commission has in place verification rules to prevent slamming, its rules do not expressly ban carrier- or carrier-agent-misrepresentations on the sales calls that typically precede a slam. The Commission thus proposes to codify, pursuant to sections 258 and 201(b) of the Act, a new § 64.1120(a)(1)(i)(A) of its rules 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). The Commission believes codifying such a ban would provide even greater clarity to carriers and will aid its enforcement efforts. The Commission seeks comment on this proposal. Are there any potential downsides to a codified rule against sales call misrepresentation? The Commission notes that its slamming rules currently do not apply to CMRS, pre-paid wireless, or interconnected Voice over Internet Protocol (VoIP). Are such misrepresentations enough of a problem for CMRS, pre-paid wireless and interconnected VoIP and sufficient to justify extending its proposed rule to cover those services? Would such a rule

impose any burden on legitimate marketing? How should the proposed rule interact with existing State slamming rules?

7. The Commission also proposes to codify a rule against cramming. While cramming has been a long-standing problem and the Commission has adopted truth-in-billing rules to help detect it, the Commission has never codified a rule against cramming. The Commission thus proposes to codify in a new § 64.2401(g) of its rules the existing prohibition against cramming that the Commission has enforced under section 201(b) of the Act. The Commission believes codifying the cramming prohibition for wireline and wireless carriers would act as a deterrent. The Commission believes codifying a ban against cramming would provide even greater clarity to carriers and will aid its enforcement. The Commission seeks comment on this proposal. Are there any potential downsides to such a rule? The Commission's cramming rules currently do not apply to interconnected VoIP, and only some of the cramming rules apply to CMRS. Should the Commission extend this proposed rule to CMRS, prepaid wireless and interconnected VoIP? Are there limitations on the Commission's ability to adopt the proposed cramming rule? Should this proposed rule be codified under the slamming rules as opposed to the cramming rules? The truth-in-billing rules do not define ''cramming'' or ''telephone bill.'' The Commission seeks comment on whether it should adopt such definitions for clarity of its 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 the Commission defines ''telephone bill'' in its rules, should it include the various ways that consumers can keep track of their telephone account activity?

PIC Freezes and Third-Party Billing

Preferred Carrier Freezes by Default

8. 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. But to do so, a consumer must affirmatively opt in. 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, the Commission seeks comment on making freezes the default so that consumers are automatically afforded additional protection against slamming, rather than requiring them to take extra steps to do so. The Commission believes this would give consumers more control to prevent slamming. 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. A majority of consumers today purchase bundles of services rather than selecting individual services, and the Commission believes most consumers have no reason to distinguish interLATA and intraLATA services. The Commission seeks comment on eliminating the service distinctions for these purposes and having carrier freezes apply to all telephone services a consumer has with no need to seek separate authorization. The Commission believes consumers purchase CMRS and interconnected VoIP as all distance services and thus a default freeze does not make sense for these services. The Commission seeks comment on that view and whether it should consider extending default freezes to those services.

9. If the Commission were to adopt a default freeze rule, should it apply to all local exchange carriers, or only those that currently offer freezes? What effect would the Commission's proposal have on carrier billing systems and sales practices? How should consumers be notified about this change to ensure they are fully aware of the default freeze? Should the Commission change its current requirements for notifying consumers about freezes, or relax those requirements? What procedures should be put in place to lift a default freeze? The Commission seeks comment on whether its freeze proposal would affect number exhaustion by incenting carriers to issue new numbers to consumers while waiting for the freeze to be lifted. The Commission's 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. The Commission seeks comment on how to achieve these goals along with whether carriers should be able to charge for freezes.

10. 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. The Commission seeks comment on these views and ask commenters to provide details on costs and benefits of both implementing a default freeze and procedures to lift a default freeze. Can the Commission 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 the Commission 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?

Blocking Certain Third-Party Billing by Default

11. Today, the Commission's 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.

12. The Commission seeks 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. Do consumers generally expect to be charged for local or long-distance service by third parties? What trends, if any, could inform the Commission's understanding of how consumers make choices in the market for telephone service? How prevalent are such third-party charges? Do the natural reductions in third-party billing as a result of market changes reduce the need for the type of rule the Commission proposes? The Commission notes 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? Notwithstanding the lack of complaints and enforcement actions about CMRS and interconnected VoIP, the Commission seeks comment on whether it should extend its proposal to those services.

13. 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 the Commission require providers to notify consumers at the point of sale? Should such notice appear on the provider's Web site and advertising materials or on consumers' bills? The Commission notes that several carriers have committed to blocking certain non-telecommunications third-party charges in the past. The Commission seeks specific comments on the processes they used to inform consumers about these changes.

14. The Commission also seeks 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 the Commission 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 the Commission has seen in recent slamming and cramming cases?

15. The Commission seeks comment on the costs and benefits of an opt-in process for third-party local and long-distance charges. The Commission believes that blocking such charges would be beneficial to consumers and reduce slamming and cramming significantly. Yet the Commission recognizes that changes to carrier billing systems can be costly. The Commission believes many carriers already have the ability to block third-party charges, and seeks 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 the Commission address those issues?

Double-Checking a Switch With the Consumer

16. 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? 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 the Commission were to adopt such a requirement, the Commission seeks comment on how the Commission could best implement it.

17. Would requiring that the executing carrier obtain the consumer's consent in writing or through the email 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 consumers with more protection from slamming? 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? Should the executing carrier be required to notify the new carrier of the timing and outcome of the double-check? If so, should there be a timeframe within which that notice must occur? Finally, what should the consequences be if an executing carrier fails to meet the deadline? The Commission seeks comment on the effect the proposal would have on carrier billing systems and sales practices. Finally, the Commission seeks comment on whether its proposed double-check would have any effect on number exhaustion by incenting carriers to issue new numbers to consumers while waiting for verification and execution of the carrier change.

18. 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. At the time those rules were adopted, the local and long-distance markets had only been recently opened to competition, and there was concern that an executing carrier might intentionally delay the carrier change or attempt to retain the subscriber. 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. In addition, slamming has evolved, and the rules the Commission adopted almost two decades ago have not proven effective in preventing slamming. Do market trends involving stand-alone long-distance service impact the need for the type of slamming rules the Commission proposes? Based on the marketplace today, the Commission also seeks comment on the relationship between the ease of switching voice providers and broadband adoption. The Commission seeks to avoid unintended negative consequences of its proposals. For example, would they effectively

''lock'' consumers into bundles of services that may not meet their current broadband needs? Finally, and fundamentally, the Commission seeks comment on the prevalence of incidences of slamming as seen in its enforcement actions versus the number of legitimate carrier changes that occur.

19. Given these changes in the marketplace and the continued and evolving problem of slamming faced by consumers, the Commission seeks 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? The Commission seeks 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. Similar to its proposals above, the Commission seeks comment on whether it should extend its proposal to CMRS and interconnected VoIP providers. 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. The Commission seeks 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? The Commission seeks comment on the costs to consumers, if any, of both options.

20. The Commission also seeks 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. The Commission believes 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. The Commission seeks comment on these views and ask commenters to provide details on costs and benefits. The Commission also seeks comment on how it can further mitigate the costs by, for example, extending implementation deadlines of any rules adopted and considering additional specific relief for smaller carriers.

21. *Section 222(b) of the Act.* 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. Section 222(b) of the Act 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.'' 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.

22. The Commission notes that section 222(d)(2) of the Act 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.'' The Commission tentatively concludes that this exception supports its proposals to allow the executing carrier to use the customer information to re-verify that the consumer wants to change providers. The Commission seeks comment on this interpretation. The Commission also seeks 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. The Commission seeks comment on whether double-checking by the executing provider could be permissive, rather than required, and whether permissive double-checking would fulfill the Commission's policy goals of deterring slamming.

23. If the Commission determines that section 222 of the Act supports requiring executing carriers to confirm a switching request, it is important to note that the exceptions in section 222(d) of the Act 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. The Commission seeks comment on this view, and on how its rules could best implement such a bar.

Other Measures

Recording Sales Calls

24. 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. The Commission seeks comment on whether submitting carriers that rely on TPVs should be required to record the entire sales call that precedes a switch. The Commission seeks comment on how to define a sales call. The Commission believes that a requirement to record all sales calls would deter misrepresentation and aid enforcement if misrepresentation does occur. The Commission seeks comment on this view.

25. If the Commission requires that sales calls be recorded, should the Commission require the same two-year retention of the recordings as it currently does for TPV calls? Should the Commission 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 the Commission's 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, the Commission seeks 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?

26. The Commission does not believe that requiring the disclosures discussed 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, the Commission believes the benefits to consumers are material. The Commission seeks comment on these views and asks commenters to provide details on costs and benefits of its proposals. The Commission also seeks comment on how it can further mitigate the costs by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

Third-Party Verifications

27. The Commission seeks comment on whether TPVs are an effective means of providing 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 the Commission 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? The Commission seeks comment on the impact of these or other verification mechanisms on competition. The Commission seeks comment on the costs and benefits of elimination of the TPV option. The Commission also seeks comment on how it can further mitigate any costs to providers by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

28. If the Commission decides to retain TPVs as evidence of a consumer's wish to switch providers, how might it make them more difficult to falsify? The Commission's 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. Should the Commission 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, the Commission does not believe adding this requirement represents a significant additional cost. But the Commission believes it would benefit consumers by making it more difficult to falsify TPVs.

29. Are there other ways to ensure the validity of the TPV? For example, should the Commission require certification of third-party verifiers by either carriers or the Commission? Does the Commission have authority to require such certification? The Commission also seeks comment on whether there are any current provisions in its verification requirements that it could update to make the rules clearer and easier to follow. Should the Commission 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? The Commission asks commenters to provide details on costs and benefits of implementing these potential rule changes. The Commission also seeks comment on how it can further mitigate the costs by, for example, extending implementation deadlines and considering additional specific relief for smaller carriers.

Initial Regulatory Flexibility Act Analysis

30. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared the 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 document FCC 17–91. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on document FCC 17–91 provided on the first page of document FCC 17–91. The Commission will send a copy of document FCC 17–91, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

30. Document FCC 17–91 contains proposals regarding how to strengthen the Commission's 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. The Commission believes that adopting the proposals in document FCC 17–91 will provide consumers with the additional safeguards they need to protect themselves from this risk.

31. Specifically, document FCC 17–91 seeks comment on whether and, if so, how: (1) The Commission should codify in a rule the prohibition against deceptive marketing and misrepresentations on the sales call; (2) the Commission should codify in a rule the prohibition against placing unauthorized charges on a consumer's telephone bill; (3) the Commission should make preferred carrier freezes the default rather than something the consumer must initiate; (4) the Commission should require consumers to opt in to third-party billing; (5) the Commission should require executing carriers to make contact with consumers to verify preferred carrier change requests prior to execution; (6) the Commission should require recording and retention of the sales call; and (7) the Commission 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.

Legal Basis

32. The legal basis for any action that may be taken pursuant to document FCC 17–91 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.

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

33. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small

organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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.

Wireline Carriers

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

35. *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.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. 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.

36. The Commission has 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.'' 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that the RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

37. *Interexchange Carriers (IXCs).* 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.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Consequently, the Commission estimates that the majority of IXCs are small entities.

38. *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, pre-paid 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.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small.

Wireless Carriers

39. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. 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. 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. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

Resellers

40. *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 pre-paid calling card providers can be considered small entities.

41. *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 pre-paid calling card providers can be considered small entities.

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

42. Document FCC 17–91 contains proposals regarding how to strengthen the Commission's 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. The Commission seeks to minimize the burden associated with reporting, recordkeeping, and other compliance requirements for the proposed rules.

43. 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. Document FCC 17–91 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 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.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. 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.

45. 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 document FCC 17–91 the Commission specifically asks how to minimize the economic impact of its proposals on small entities. For instance, the Commission seeks comment on the specific costs of the measures it discusses in document FCC 17–91, and ways it might mitigate any implementation costs, including by extending implementation deadlines for small carriers. It also particularly asks whether smaller carriers face unique implementation costs and, if so, how the Commission might address those concerns. In addition, for example, it seeks 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, the Commission seeks comment on the overall economic impact these proposed rules may have on carriers because the Commission seeks to minimize all costs associated with these proposed rules.

46. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to document FCC 17–91 and the IRFA, in reaching its final conclusions and taking action in this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 225, 254(k), 403(b)(2)(B), (c), 715, Pub. L. 104–104, 110

Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.1120 by revising paragraph (a)(1)(i) to read as follows:

§ 64.1120 Verification of orders for telecommunications services.

(a) * * *

(1) * * *

(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.

(B) [Reserved]

* * * * *

■ 3. Amend § 64.2401 by adding paragraph (g) to read as follows:

§ 64.2401 Truth-in Billing Requirements.

* * * * *

(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.

[FR Doc. 2017–16961 Filed 8–11–17; 8:45 am]

BILLING CODE 6712–01–P