Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Reply Comments of Communications Workers of America

Brian Thorn
Debbie Goldman
501 Third St. NW
Washington, DC 20001
(202) 434-1131 (phone)
(202) 434-1201 (fax)
bthorn@cwa-union.org

October 13, 2017

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I. Introduction and Summary

The Communications Workers of America (CWA) submits these Reply Comments in response to the Federal Communications Commission's (FCC or Commission) *Notice of Proposed Rulemaking* (*NPRM*) seeking comment on methods to protect consumers from unauthorized changes and charges, to empower consumers to take action against slammers and crammers, and to deter carriers from unethical sales practices.[1] CWA represents 700,000 workers in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, law enforcement, manufacturing and other fields. CWA represents approximately 75,000 frontline customer sales and service employees in the telecommunications industry. As the representative of customer sales and service employees in the telecommunications industry, with frequent engagement with employees who want a voice at nonunion companies, CWA is uniquely positioned to provide information to the Commission about the ways in which telecommunications companies' sales policies and practices lead to slamming and cramming. CWA has for years fought for good working conditions for customer service employees, bargaining to improve compensation and reduce unnecessary work-pressures while articulating a vision for a workplace that promotes quality customer service and ethical sales practices.

The Wells Fargo banking scandal raised the profile of the massive consumer harm that results from fraudulent cramming of unauthorized charges on consumers' accounts. In the Wells Fargo case, the bank's overly aggressive sales quotas and performance management practices forced

[1] *See, In the Matter of Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges,* Notice of Proposed Rulemaking, CG Docket No. 17-169 (rel. July 14, 2017). (*NPRM*)

employees to put 3.5 million unauthorized services on customer accounts, including more than 800,000 unauthorized car loans, resulting in massive consumer fraud, repossession of customers' cars, hundreds of millions of dollars in illegitimate fees and charges, and faulty credit ratings. The Committee for Better Banks, an organization of frontline bank employees and community groups, highlighted the ways in which Wells Fargo's extreme and unrealistic sales quotas and incentive structures pressured some employees to cram unauthorized services and products onto customer accounts. As a result of employee whistle-blowers coming forward, the Consumer Financial Protection Bureau (CFPB), took enforcement action against Wells Fargo, and the bank subsequently eliminated sales quotas and adjusted its performance management system in order to get at the cause of the banking scandal.

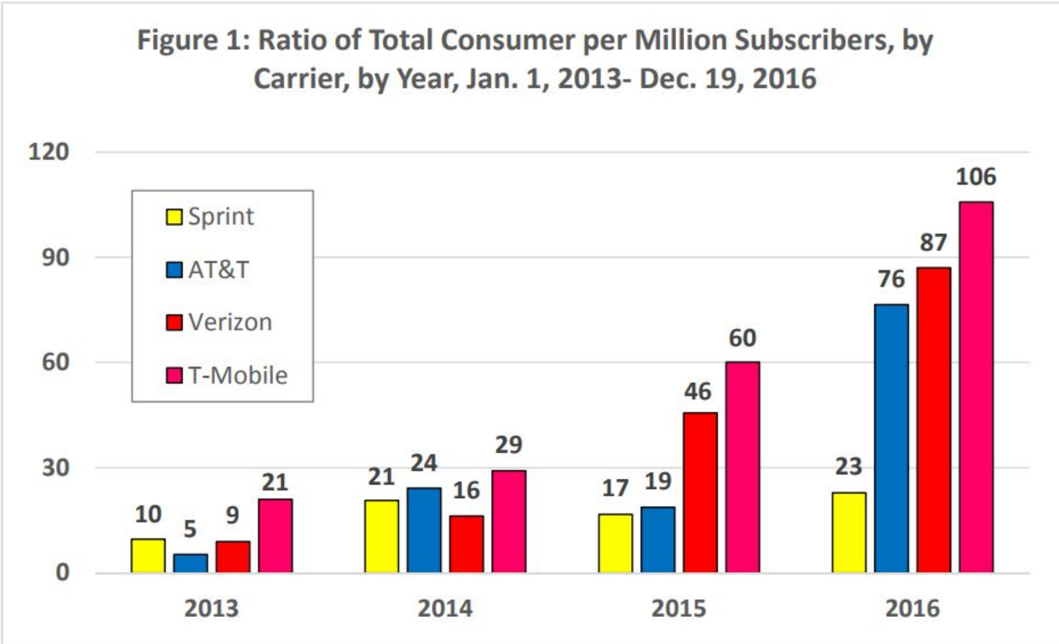
In this proceeding, CWA urges the Commission to solicit the experiences of frontline sales workers and engage in a fact-finding mission to identify the root cause of what the Commission has labeled "deception in sales calls." Specifically, CWA calls on the Commission to convene a workshop to gather information regarding the impact of telecommunications companies' sales incentives and performance management practices on cramming and slamming of unauthorized charges on customers' bills. The workshop should include representatives of frontline customer sales and service employees. The Commission must have whistle-blower protections in place to ensure employees can speak out about workplace pressures without fear of employer retaliation.

In these comments, CWA highlights many of the issues that could be explored in a Commission workshop on sales incentives and performance management practices related to cramming and slamming. While we support the specific recommendations that the Commission, as well as consumer groups and Change to Win (CtW), have proposed to protect consumers, CWA believes the Commission must go deeper in its investigation to unearth the root causes of unethical sales practices – corporate sale incentives and performance management practices that force frontline employees into an untenable position: meet unrealistically high sales quotas and sales incentives, or face discipline, termination, and loss of income.

II. The Commission Should Adopt Strong Protections against Cramming and Slamming that Apply to All Voice Providers, Whether Traditional Landline, Interconnected VoIP, or Wireless

As the Commission acknowledges, cramming, or the act of adding unauthorized charges to a consumer's bill, remains a serious problem across the telecommunications industry. The Commission received almost 8,000 slamming and cramming complaints over the two-year period from 2015 through 2016. This number seriously undercounts slamming and cramming complaints because 1) the Commission allows states to administer the Commission's slamming rules so consumers in states like California, New York, and Texas must file their slamming complaints with their state regulatory commissions rather than with the FCC; and 2) the Commission records many complaints regarding unauthorized charges as "billing" complaints. The Commission received 50,000 billing complaints in 2015 and 2016.[2]

In comments submitted to the Commission in this proceeding, the Change to Win labor federation provides additional evidence of widespread cramming by wireless carriers. Change to Win analyzed over 50,000 consumer complaints filed with the Federal Trade Commission (FTC) or compiled by the FTC from other sources for the period 2013 to 2016 regarding the four largest wireless carriers. CtW's analysis found that more than 20 percent of the 50,000 complaints analyzed – or more than 10,000 mobile phone consumer complaints – involved unauthorized charges on consumers' bills, with a steady increase in the number of consumer complaints over the four-year period.[3]



Source: CtW analysis of complaints compiled by the FTC

Change to Win's complaint analysis found that T-Mobile has the highest complaint rate among the four wireless carriers. To understand the reason for this high rate, CtW supplemented its consumer complaint analysis by polling and interviewing T-Mobile retail and call center workers. T-Mobile employees report that they "face enormous pressures to enroll customers in ancillary services and products that the customers did not request" and experience "frequent

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[2] *Ibid*., p. 3.
[3] Comments of Change to Win, CG Docket No. 17-169 (Sept. 13, 2017), pp. 6-7 ("CtW Comments"). Change to Win adds that this coding does not capture the entire universe of cramming complaints; during this period the FTC received 7,136 additional complaints coded as "Mobile: Carrier Rates/Plans;" based on CtW's manual review of a subset of these complaints, many involved claims of billing problems, including cramming.

consumer complaints about unauthorized charges."[4] These pressures to meet unrealistic sales quotas are particularly strong in the call centers and retail stores operated by outside, third-party vendors under contract. As we discuss in Section III, company policies that impose discipline, termination, and significant loss of compensation for failure to meet unreasonably high sales quotas create enormous pressure on frontline employees that are not conducive to ethical sales practices, often incentivizing or forcing employees to engage in slamming and cramming.

In this proceeding, the Commission seeks public comment on proposals to strengthen consumer protections against slamming and cramming. CWA commends the Commission for moving forward to protect consumers from fraudulent and unauthorized charges, and agrees that it is long past time to codify regulations enacted under the authority of Section 201(b) of the Communications Act.[5] As consumer commenters emphasize, the slamming and cramming rules that the Commission adopts should cover *all* voice customers, regardless of the technology used to deliver the voice service, whether over traditional landline, interconnected VoIP, or wireless.[6] Today a majority of households rely on mobile – more than 50 percent of American homes have voice service only through wireless devices – or interconnected VoIP for voice communications.[7]

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[4] Change to Win's "T-Mobile Workplace Pressures Hurt Workers and Customers" report relies on written surveys and interviews with T-Mobile call center workers. (CtW Workplace Pressures at T-Mobile Report)

[5] Section 201(b) states that "all charges practices, classifications, and regulations for and in connection with [interstate and foreign] communication services [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful."

[6] Comments of Consumers Union, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center, on behalf of its low-income clients, National Consumers League, Public Citizen, and Public Knowledge, CG Docket No. 17-169 (Sept. 13, 2017). (Consumer Comments)

[7] Centers for Disease Control, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July - Dec. 2016," National Center for Health Statistics (rel. May 2017). Available at: https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf; Federal Communications Commission, *Voice Telephone Services: Status as of June 30, 2016*, Industry Analysis and Technology Division, Wireline Competition Bureau (rel. Apr. 2017). Available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf.

Wireless and VoIP customers are entitled to the same protections as those using traditional landline service. Moreover, the Change to Win data documents that cramming is endemic in the wireless sector.[8]

CWA supports the recommendations provided by joint consumer commenters as well as from the Change to Win labor federation urging the Commission to adopt strong rules that prohibit or severely limit the ability of carriers to place third-party charges on a carrier's bill. The Commission should require that voice providers offer a free opt-in to block all third-party charges, and require prominent notice to consumers at the point of sale and in all written and online materials. Moreover, the Commission should protect consumers from all providers' unauthorized charges. The rules should require carriers to get a customer's express informed consent – documented in writing – before adding any charges to a customer's account. Commission rules should address cramming of third-party charges and the carrier's own add-ons, even when it is not accompanied by slamming. Finally, the Commission should establish, and require compliance with, a process that enables consumers easily to reverse fraudulent charges.[9]

The aforementioned cramming and slamming rules are necessary but not sufficient to stop the practice of unauthorized and fraudulent charges. As the Commission notes, "our recent enforcement actions reveal that a major source of slamming is deception in the sales calls."[10] Therefore, in this proceeding, the Commission should also address the underlying cause of deceptive sales practices – the unrealistic sales quotas and incentives that telecommunications companies impose on frontline sales and service employees.

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[8] CtW Comments, pp. 5-8.
[9] Consumer Comments, pp. 2-8; CtW Comments, p. 2.

III. Telecommunications Carriers' Unrealistic Sales Quotas are Inconsistent with the Goal of Preventing Unauthorized Charges on Consumers' Bills

Companies that impose unrealistically high sales quotas on sales and service representatives are responsible for driving unethical sales practices. Certainly, that was the conclusion reached by the Consumer Financial Protection Bureau in its investigation of Wells Fargo's infamous fraudulent account scandal. The retail bank's lofty sales goals and compensation incentives (bank employees had to sell every household eight bank products, for example), along with pressure from management, forced many bank employees to open accounts without the customer's knowledge. As part of its $100 million enforcement action against Wells Fargo, the CFPB recommended the bank hire an independent consultant to review its procedures, including the bank's performance measurements and sales quotas. Following the review, Wells Fargo eliminated sales goals and implemented a new compensation structure that emphasizes customer satisfaction.[11]

Similar to Wells Fargo, many telecommunications carriers have adopted unrealistically high sales quotas, incentive pay compensation plans, and performance management systems that force sales and service representatives to engage in unethical sales practices in order to meet the quotas or earn sales incentives. Aggressive performance management systems discipline sales employees for failure to make the sales quota and revenue benchmarks. Typically, failure to meet

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[10] *NPRM*, p. 5.

[11] *See, In the Matter of Wells Fargo Bank*, Consumer Financial Protection Bureau, Consent Order (Sept. 8, 2016). Available at: http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf *See also*, "Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts," Consumer Financial Protection Bureau, press release (Sept. 8, 2016) Available at: https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/; James Rufus Koren,"It's Been a Year

sales quotas for three time periods can lead to termination. The constant pressure to sell privileges sales over attention to quality customer service and leads to high rates of stress-related illness for employees.

Sales quotas can be enormously complex and can change frequently, requiring an employee to sell a certain number of key products or services, reach a benchmark revenue goal before they can earn a significant portion of their pay. In addition, sales and customer service representatives, many of whom must meet sales quotas, must also meet "average talk time" standards while at the same time offering a full range of products and services to every customer regardless of the individual customer's situation. Many telecommunications companies base a significant portion of compensation (as much as 30 to 40 percent) on sales, and plans typically do not begin to pay out until the employee has met a certain target. Unrealistic sales quotas and incentives force many employees into an untenable choice: put unauthorized charges on a bill or earn adequate compensation to support one's family and risk losing one's job.

In light of the growing dominance of wireless communication, the Commission should pay particular attention to cramming in this segment of the telecommunications industry. The majority of households now depend on mobile devices for voice service and carriers are seeking to spur revenue growth in a saturated market through add-on services and bundling. Thus, conditions exist for wireless carriers to encourage – implicitly or explicitly – unethical sales practices. The Commission has paid insufficient attention to anti-consumer practices by wireless carriers. Change to Win gathered data on T-Mobile advertisement and sales practices,

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Since the Wells Fargo Scandal Broke – and New Problems are Still Surfacing," *Los Angeles Times*, Sept. 8,2017 (http://www.latimes.com/business/la-fi-wells-fargo-one-year-20170908-story.html).

determining that the third-largest wireless carrier engages in unfair practices toward consumers. In January 2016, with the complaint updated and refiled in June 2017, CtW requested the Commission investigate and bring enforcement action against T-Mobile for "a pattern or practice of enrolling customers in ancillary services, such as phone insurance, unlimited data and additional lines, without their consent."[12] CWA urges the Commission to respond to CtW's request to conduct an investigation into T-Mobile's sales practices. In addition to its analysis of consumer complaints, Change to Win conducted extensive research on T-Mobile sales practices, including interviews with T-Mobile sales representatives. T-Mobile employees report facing enormous pressure to enroll customers in ancillary services and products that customers do not request and describe a culture of work-pressure and fraudulent sales. "Everyone knows we're under pressure to engage in fraudulent sales practices, but no one will say anything about it," one ten-year T-Mobile employee said. "The system is designed to keep this dysfunction in place."[13] Multiple workers described what the corporate sales policies required. "We're required to confuse the customers by giving them the run around," one reported. Another customer service employee described the practice of promising customers a "free" tablet without disclosing the monthly service costs: "It's a sales tactic, but we're blatantly lying to customers."

CWA interviewed Verizon Wireless sales and customer service workers to understand the issues they face on the job. Interviewees reported similar stories. "I get the point of having metrics because the company has a certain amount of goals they want to see," said one Verizon Wireless worker. "But it's their approach of getting these metrics that's not right. It's like you're

[12] Change to Win, Request for Investigation of T-Mobile US, Inc. (June 2017). Available at: https://speedmatters.org/sites/default/files/request_for_investigation_of_t-mobile_to_fcc_re_fraudulent_enrollment_-

hounding people to get this particular thing and they'll tell us 'no.'" Another Verizon Wireless worker described a practice also raised in the T-Mobile interviews – selling customers a product they do not know how to use: "The customers get hounded. They're leaving with a phone, a tablet, extra stuff they don't know how to turn on. They'll be mad it hasn't been used. It's an 85-year-old lady that doesn't need it. I get paid to make sure they take it out the door. It'll come back six months later, they don't know what it is. Never used, still in the bag."

CWA represents wireline employees at some of the largest telecommunications companies, including AT&T, CenturyLink, Verizon, Frontier, and Consolidated Communications. As we describe below, CWA has negotiated into our collective bargaining agreements a number of policies to protect employees against unreasonable sales quotas and sales incentives, including due process provisions to ensure that employers follow the rules in cases of discipline and termination. Despite these protections, sales and customer service representatives face significant pressure to meet unrealistic sales quotas. In a recent roundtable with sales and service employees working for AT&T, CenturyLink, Verizon, and Frontier, participants reported that frequently fewer than 50 percent of sales representatives make their monthly sales goals.

Employer sales and compensation policies that force unethical sales practices are particularly acute at call centers operated by vendors under contract with communications companies ("contract call centers") and the authorized retail stores operated by independent owners selling the telecommunications carriers' brand ("authorized dealers"). The employees working at contract call centers or authorized dealers typically earn significantly lower pay than corporate

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[13] CtW Workplace Pressures at T-Mobile Report.

employees. A CWA survey of more than 1,300 AT&T employees who work at corporate retail stores and call centers found that 64 percent of respondents have heard from customers that authorized retailers enrolled them in services not requested.[14] Corporate employees offered specific examples of cramming by employees of authorized retailers, such as signing up customers for more expensive plans without the customer's knowledge, adding extra services such as a hotspot or other phone features onto customer accounts, selling customers a "free" tablet without disclosing monthly service costs, or adding insurance that the customer did not request.[15] Another CWA report on the problems of moving customer service jobs overseas described the difference between corporate and vendor employees this way: "Corporate employees understand that vendor employees are focused on selling more products because they have to meet sales quotas. Unfortunately this sales-focused system, paired with inadequate training on AT&T policies, can lead to poor customer outcomes that land at the feet of corporate employees who are the end of the line in resolving customer complaints."[16] Third party vendors, particularly those located offshore with lax privacy regimes, expose US consumers to serious data breaches. In 2015, the Commission fined AT&T $25 million to settle an investigation into serious security breaches by employees of third-party call center vendors working under contract for AT&T in Mexico, Columbia, and the Philippines. Vendor employees stole and sold for profit personal information about 280,000 US customers, allowing unscrupulous individuals to unlock

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[14] Communications Workers of America, *AT&T's Retail Sales Problem: How Outsourcing Compromises Customer Service and Job Quality* (June 5, 2017). Available at: https://www.cwa-union.org/sites/default/files/consumerreport-6-5-2017.pdf

[15] *Ibid*., p. 2.

[16] Communications Workers of America, *Offshoring Customer Service: How AT&T Lowers Standards for Workers and Consumers through its Global Race to the Bottom* (May 4, 2017) p. 2. Available at: http://goodjobsatt.org/wp-content/uploads/2017/05/OffshoringCustomerService.pdf

cell phones without the knowledge of the cellphone owner.[17] These issues with authorized retailers and vendors are not unique to AT&T workers. "Third-party retailers don't get trained," said one T-Mobile worker in an interview. "They make the sale, get the commission, and then T-Mobile workers have to fix the customer's problems."

CWA has little information on sales and customer services practices at largely nonunion cable companies. As the Commission notes, it received 50,000 billing complaints from across the telecommunications industry, including cable companies.[18] Billing practices of some cable companies recently received attention from Sen. Claire McCaskill (D-MO) and the Senate's Permanent Subcommittee on Investigations.[19] The committee investigated the billing practices of cable and satellite companies, finding that, between January and April of 2016, Time Warner Cable (TWC) overbilled customers an estimated $640,000 and TWC and Charter made no effort to trace equipment overcharges to their origin.

Over the years, CWA has negotiated into our collective bargaining agreements many provisions to protect workers against unrealistic sales quotas and unfair sales commission plans that incent unethical sales practices and make it difficult to provide quality customer service. All CWA contracts include due process grievance and arbitration provisions to ensure that employers treat employees fairly and according to the rules. CWA has negotiated provisions to ensure that

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[17] *See*, *In the Matter of AT&T Services*, Order, File No.: EB-TCD-14-00016243 (rel. Apr. 8, 2015). Available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-399A1.pdf; *See also*, Jim Puzzanghera, "AT&T to pay $25 million to settle probe of call center data breaches," *Los Angeles Times* (April 8, 2015). Available at: http://www.latimes.com/business/la-fi-att-data-breach-fcc-settlement-20150408-story.html.

[18] *NPRM*, para. 5, fn. 14.

[19] *See*, US Senate Permanent Subcommittee on Investigations, *Some Cable and Satellite Companies Do Not Refund Customer* Overcharges, staff report (June 27, 2016). *See also*, Office of US Senator Claire McCaskill, "Cable & Satellite TV Providers—McCaskill Pulls Back Curtain on Companies' Internal Workings," press release (June 27, 2016).

sales goals and quotas for performance management are set at reasonable levels, with protections to ensure that the goals and quotas are implemented fairly. CWA has negotiated provisions that protect employees from discipline solely for failure to meet sales goals. In addition, CWA has negotiated adjustment of sales objectives for time spent off-line which require the company to pro-rate sales goals to account for time away from work, such as training, Family and Medical Leave, vacations, death in the family, and jury service, among others. CWA has negotiated guaranteed time off the telephone or offline to do paperwork and return calls to customers. CWA has negotiated provisions that restrict how frequently employers can change sales goals. CWA has negotiated union-management committees with oversight responsibility of sales goals and leveraged compensation plans.[20]

Most important, CWA has articulated a vision for good working conditions for customer service employees that promotes quality customer service and ethical sales practices. As described in a CWA publication, "Unrealistic sales goals, sales quotas, and poorly designed commission/leveraged compensation plans create stressful working conditions for employees that result in high turnover, absenteeism, and stress-related illness. Moreover, poorly designed and unrealistic sales goals, quotas, and commission/leveraged compensation plans create perverse incentives that encourage unethical sales behavior." In our view, a properly designed sales goal system and commission/leveraged compensation plan should achieve seven objectives: enable all employees to succeed and share in a portion of the revenue they generate; encourage ethical sales practices; set quotas/targets/goals based on reasonable and measurable sales opportunities;

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[20] Communications Workers of America, *CWA Contract Provisions to Promote Good Working Conditions for Customer Service Workers* (Feb. 2014): p. 5-7.

protect employees from unfair discipline for failure to meet quotas, targets or goals; reward excellent customer service; be simple, understandable, and based on accurate sales tracking systems; and include oversight and data review by a union-management committee.[21]

Unfortunately, some unionized telecommunications companies are pursuing a race to the bottom as they compete with nonunion companies to drive sales through unrealistically high sales quotas and benchmarks and aggressive performance management systems. Therefore, Commission action is needed to protect customers from cramming by adopting strong rules that apply to *all* voice service providers, including traditional landline, wireless and interconnected VoIP providers.

But the Commission should go further to protect consumers from the high-pressure sales environments that companies create. There is precedent for public agencies censuring companies for unfair and abusive practices spurred by sales quotas, leading to company policy changes that better serve customers. As noted earlier, last year, the Consumer Financial Protection Bureau found that the Wells Fargo committed unfair and abusive acts against customers and fined the bank $100 million.[22] Following an ordered independent review, Wells Fargo eliminated its unrealistic sales goals and implemented a new compensation structure that emphasizes customer satisfaction.[23] In addition, in 1988, the Pennsylvania Office of Consumer Advocate and the

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[21] *Ibid*., p. 5.

[22] *See, In the Matter of Wells Fargo Bank*, Consumer Financial Protection Bureau, Consent Order (Sept. 8, 2016). Available at: http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf *See also*, "Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts," Consumer Financial Protection Bureau, press release (Sept. 8, 2016) Available at: https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/

[23] Matt Egan, "Wells Fargo's notorious sales goals to get a makeover," CNN Money (Jan. 6, 2017). Available at: http://money.cnn.com/2017/01/06/investing/wells-fargo-replace-sales-goals-fake-accounts/index.html

Attorney General of Pennsylvania filed two separate, but related, charges against then-Bell of Pennsylvania – now Verizon – for deceptive sales practices. As a result of settlements, Bell of Pennsylvania agreed to provide $36.4 million to approximately 1.5 million residential customers. Included in the settlement was a provision that protected service representatives from an unsatisfactory performance evaluation based solely on failure to meet sales objectives and a requirement that the company give equal weight to customer service and sales in evaluating service representative performance.[24] Today, more than 30 years later, this provision remains in effect, and Verizon wireline sales and service employees in Pennsylvania cannot be disciplined solely for failure to meet sales objectives, protecting employees and consumers alike.

IV. Conclusion

We urge the Commission to adopt its proposed rules, as well as the recommendations of Consumers Union et al. and Change to Win, to protect consumers from cramming. But the Commission should do more to address the underlying sales pressures, sales incentives, and performance management systems that encourage unethical selling tactics and put workers in a difficult position. First, the Commission should respond to CtW's Request for Investigation of T-Mobile, which alleged unfair practices towards customers, including fraudulent enrollment practices that have a direct relation to this proceeding. Second, the Commission should gather information through a public workshop about corporate policies at major telecommunications companies to determine how sales quotas and performance management systems contribute to pressures that encourage unethical sales practices. To protect employees who want to speak out about the workplace pressures caused by these company policies with fear of losing their jobs,

[24] Bell of Pennsylvania, Special News Bulletin, "Two-Year-Old Suits Coming To A Close" (Apr. 10, 1990).

the Commission should ensure strong whistle-blower protections. The Commission should issue a report on its findings with recommendations on sales incentives and performance management systems that would incent ethical sales practices, propose regulations to prevent work-pressures that force companies' sales and customer service representatives into untenable positions, and design an enforcement agenda to hold companies accountable and protect consumers from slamming and cramming in the telecommunications industry.

Respectfully Submitted,

Brian Thorn
Communications Workers of America

October 13, 2017