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June 28, 1999

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James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
North Office Building - Filing Room  
PO Box 3265  
Harrisburg, PA 17105-3265

RE: Rulemaking Re Standardizing Local Exchange Company  
Responses to Customer Contacts Alleging Unauthorized  
Changes to the Customer's Telecommunications Service  
Provider and Unauthorized Charges Added to the Customer's  
Bill; Docket No. L-00990140; **COMMENTS OF THE  
PENNSYLVANIA TELEPHONE ASSOCIATION**

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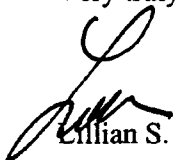
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Dear Secretary McNulty:

Enclosed, for filing with the Commission, are an original and fifteen (15) copies of the Comments of the Pennsylvania Telephone Association in the above-captioned matter. Also enclosed is an additional copy. Please date stamp the extra copy and return it to me via the courier.

If you have any questions regarding this filing, please direct them to Norman J. Kennard or me. Thank you for your attention to this matter.

Very truly yours,

  
Lillian S. Harris

Enclosure

cc: David E. Freet, President  
Mitchell A. Miller, Director

LSH:sah

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Re: Rulemaking Re Standardizing Local :  
Exchange Company Responses to Customer :  
Contacts Alleging Unauthorized Changes :  
to the Customer's Telecommunications :  
Service Provider and Unauthorized Charges :  
Added to the Customer's Bill :

99 JUN 29 AM 11:30

Docket No. L-00990140

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**COMMENTS OF THE  
PENNSYLVANIA TELEPHONE ASSOCIATION**

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**I. INTRODUCTION**

The Pennsylvania Telephone Association ("PTA")<sup>1</sup> respectfully submits these comments in response to the Pennsylvania Public Utility Commission's ("Commission") January 14, 1999 Order (hereinafter "Rulemaking Order")<sup>2</sup> establishing a proposed rulemaking to address "cramming" and "slamming." As noted by the PTA in its Comments to the Commission's Interim Guidelines on these issues,<sup>3</sup> the Commission's action is a step in the right direction toward eliminating this illegal and reprehensible conduct. The Rulemaking Order clarifies many points that were the subject of PTA's previous comments regarding the Interim Guidelines. PTA offers these additional comments for the Commission's consideration in promulgating its final form regulations.

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<sup>1</sup> In this matter, the PTA represents its members that have not filed individual comments.

<sup>2</sup> 29 Pa. Bull. 2779.

<sup>3</sup> The PTA previously filed comments to the Commission's proposed Interim Guidelines at Docket M-00981063, which are incorporated by reference here.

## II. COMMENTS

### A. The Final Regulations Should Continue To Limit LEC Responsibilities

The prevention of cramming and slamming is a laudable goal and one that LECs hope to see achieved. However, the Rulemaking Order explicitly and appropriately makes clear that its purpose is to standardize LEC<sup>4</sup> responses to customer contacts alleging cramming or slamming and not to prevent cramming or slamming (or to charge LECs with that responsibility). The LECs' limited duties are clearly spelled out under the proposed regulations. The LECs must identify and recourse disputed charges and provide certain information related to cramming or slamming incidents to customers and carriers alike. However, LECs are not ultimately responsible for ensuring that the offending carrier ceases the inappropriate conduct (like continuing to bill for crammed services).<sup>5</sup> This concept must carry through to the final regulations adopted by the Commission.

### B. To Foster Consistency, The Commission Should Reconsider Adopting Slamming Rules Before The FCC Finalizes Its Slamming Rules

PTA agrees with Bell Atlantic-Pa., Inc. ("BA-PA") that the Commission should re-evaluate its decision to move forward with slamming rules on a parallel but different track than the FCC.<sup>6</sup>

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<sup>4</sup> Consistent with the concept of regulatory parity, the final regulations (and the interim guidelines now in place) should be applicable to both ILECs and CLECs.

<sup>5</sup> The LEC is charged with informing the customer that the LEC will instruct the billing agent or service provider, or both, to take steps necessary to prevent further billing of crammed charges or billing for a slam event, but the LEC is not responsible for the ultimate action taken by the service provider. 52 Pa. Code §§64.23 (a)(3) and (b)(4).

<sup>6</sup> PTA notes that, although the Commission has been reticent to delay implementation of slamming and cramming regulations, comprehensive slamming rules which would be applicable to all carriers and which conflict with the Commission's proposed regulations are presently pending before the FCC. In Re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (released December 23, 1998). Now that the Commission has interim slamming guidelines in place, it would seem appropriate for the Commission to await FCC action on its proposed slamming rules and conform Pennsylvania's final slamming regulations to be consistent, so that carriers are not subjected to two differing sets of slamming regulations.

For all of the reasons stated by BA-PA in its comments filed today, the PTA urges the Commission to await FCC action and then determine what state slamming rules, if any, would be appropriate.

**C. The Record Retention Period Should Be Shortened Or Revised To Comport With Proposed Federal Rules**

With respect to record maintenance, the PTA respectfully submits that the three year record retention period for cramming and slamming complaints which is proposed in the regulations is too lengthy. In addition, it will not provide the Commission with a complete picture of cramming or slamming conduct because LECs may be unaware of cramming or slamming events reported directly to the LXC or other service provider. As suggested previously by other commentors, it makes sense for the Commission to attempt consistency with proposed federal reporting rules.<sup>7</sup> Periodic reporting of cramming and slamming complaints, like that presently proposed before the FCC, would provide the Commission with pertinent information upon which it could base an investigation or take appropriate penal action. Finally, PTA emphasizes that its members have voluntarily taken steps to terminate contractual relationships with service providers that have proven themselves to be less than reputable with regard to cramming and slamming events.

**III. CONCLUSION**

PTA emphasizes that it is important for the Commission to keep in mind that the unauthorized carriers, and not the LECs should be made to atone for illegal cramming and slamming conduct. Thus, the final regulations should continue to limit LEC responsibilities along

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<sup>7</sup> The FCC reporting rule would require that periodic reports be filed which itemized the number of complaints received by a carrier from its customers. See FCC Order at ¶179; proposed 47 C.F.R. §64.1100(f). This proposed rule was inadvertently omitted from the appendices to the Order, but it is based on the reporting provision included in the Senate- Anti-slaming bill, S. 1618 §101(k)).

the lines set forth in the Interim Guidelines. In addition, the record retention requirement should be shortened or revised to comport with the FCC's proposed reporting requirement.

Respectfully submitted,



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Norman J. Kennard  
Lillian S. Harris  
Malatesta Hawke & McKeon LLP  
Harrisburg Energy Center  
100 North Tenth Street  
Harrisburg, PA 17101

Counsel for  
Pennsylvania Telephone Association

Dated: June 28, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing Comments of Pennsylvania Telephone Association, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated this 28<sup>th</sup> day of June, 1999.

VIA FIRST CLASS U.S. MAIL

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Pennsylvania Public Utility Commission  
Law Bureau  
North Office Building, G30  
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Harrisburg, PA 17120

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Bell Atlantic - Pennsylvania, Inc.  
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Daniel E. Monagle  
Assistant General Counsel

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June 28, 1999

Via Federal Express  
James J. McNulty, Esq.  
Pennsylvania Public Utility Commission  
North Office Building, Rm. B-20  
North Street & Commonwealth Avenue  
Harrisburg, PA 17120

**COPY**

Re: Rulemaking Re Standardizing Local Exchange Company  
Responses to Customer Contacts Alleging Unauthorized  
Changes to the Customer's Telecommunications Service  
Provider and Unauthorized Charges Added to the  
Customer's Bill, Docket No. L-00990140

Dear Mr. McNulty:

Enclosed for filing with the Commission in the above-captioned proceeding are an original and fifteen (15) copies of the Comments of Bell Atlantic - Pennsylvania, Inc.

Very truly yours,

Daniel E. Monagle

DEM/dkf  
Enc.

cc: Attached Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION JUN 28 1999

Rulemaking Re Standardizing Local :  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

COMMENTS OF BELL ATLANTIC-PENNSYLVANIA, INC.

As in its Comments filed on July 24, 1998 in the Interim Guidelines docket,<sup>1</sup> Bell Atlantic-Pennsylvania, Inc. (BA-PA), applauds the Commission's efforts to protect Pennsylvania telecommunications consumers from the evils of cramming and slamming, first by voluntary guidelines and now by proposed rules codifying the guidelines and making them mandatory. BA-PA has dealt aggressively with slamming for the past several years to shield its customers from this practice, and, as the Commission is aware, Bell Atlantic over the past 18 months has instituted a series of measures in all Bell Atlantic jurisdictions, including Pennsylvania, to crack down on the cramming problem.<sup>2</sup> Based in part on its experience in dealing with both of these unlawful practices, BA-PA

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<sup>1</sup>Docket No. M-00981063. BA-PA's Comments in this companion docket are incorporated by reference into BA-PA's Comments here, to the extent they remain pertinent to the Commission's proposed cramming and slamming regulations and are consistent with BA-PA's Comments here.

<sup>2</sup>In early July, Bell Atlantic plans to publically announce that all Bell Atlantic OTC customers now have the option to limit miscellaneous charges on their bills (the category of charges which can include crammer charges) to those imposed only by certain service providers - namely, Bell Atlantic itself and the customer's intraLATA and interLATA toll providers. Bell Atlantic began rolling out this major enhancement to its aggressive anti-cramming program on June 21 by advising customers lodging cramming complaints with BA-PA and other Bell Atlantic OTCs of the availability of this miscellaneous billing block option..



believes that the proposed cramming regulations, with one clarifying change proposed below, are appropriate and should be adopted. BA-PA recommends that the Commission reconsider the adoption of its proposed slamming rules, or at least defer such adoption pending the FCC's implementation of its comprehensive liability slamming rules, because there are currently conflicts between the proposed state rules and the federal rules which would make it impossible for BA-PA and other Pennsylvania LECs and IXCs to comply with both sets of rules.

Proposed cramming rule Section 64.23(a)(5) would require LECs to provide customers who indicate a desire to receive cramming complaint disclosure information with adequate information about how to pursue their cramming complaints by contacting "the Pennsylvania Office of Attorney General, the Federal Communications Commission, and the Federal Trade Commission." While the Proposed Rulemaking Order (at 23) recognizes that the intent of this rule is to facilitate the filing of "a complaint with a regulatory agency or other appropriate entity" by customers who may wish to do so, the language of the proposed rule suggests that these customers receive information about how to file multiple complaints with all three of the entities listed. BA-PA suggests that this rule be clarified by changing the quoted language above to read "the Pennsylvania Office of Attorney General, the Federal Communications Commission, or the Federal Trade Commission, as appropriate." This change would properly limit complaint disclosure information to that pertaining to the appropriate complaint forum, depending on the nature of the cramming charges complained about.<sup>3</sup> With this one rule

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<sup>3</sup>See discussion of complaint jurisdictional divisions in BA-PA's Comments in Docket No. M-00981063 at pages 5-6.

clarification, BA-PA supports the Commission's adoption of its proposed cramming rules.<sup>4</sup>

The FCC has both adopted and proposed additional detailed, comprehensive slamming rules to enforce the Telecommunications Act of 1996 prohibition of slamming (47 U.S.C. Sec. 258).<sup>5</sup> These rules include complex slamming liability rules<sup>6</sup> which conflict in certain material respects with various proposed Commission slamming regulations – most notably, Secs. 64.23(b)(3), (4) and (5). The Commission's proposed rules call for LECs to simply remove alleged slammer IXC charges from a customer's bill and recourse them back to the IXC, advising the customer that the LEC will instruct the IXC to stop further billing to the customer and that removal of the charges does not guarantee the IXC will not use other collection remedies to recover these charges. The FCC's adopted liability rules, by contrast, lay out a completely different and substantially more granular procedure to determine slamming liability or nonliability and what charges

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<sup>4</sup>In its Proposed Rulemaking Order (at 14-15, 21), the Commission clarified that the prevention of "any further billing of those charges or types of charges to the customer's account" sought to be achieved in proposed cramming rule Section 64.23(a)(3) applies only to recurring charges for the crammed service the customer has complained about, and does not extend to other crammer charges or types of charges. This clarification makes it unnecessary to modify the language of the rule.

<sup>5</sup>In Re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking (hereafter "FCC Order"), CC Docket No. 94-129 (Released Dec. 23, 1998), and adopted and proposed rules at Appendices A and B, respectively.

<sup>6</sup>The adopted liability rules – at 47 C.F.R. Secs. 64.1100(c) and (d), 64.1170 and 64.1180 – were scheduled to become effective on May 17, 1999, but have been stayed pending the FCC's disposition of pending petitions for reconsideration of these rules and further order of the court. MCI WorldCom, Inc., v. FCC, September Term 1998, No. 99-125 (D.C. Cir. May 18, 1999). The FCC Order also includes an proposed rulemaking which, inter alia, proposes changes to 47 C.F.R. Secs. 64.1100(c) and (d)(2) and 64.1170(a), (a)(2)(A), and (d) of the adopted liability rules. Copies of these liability rules and proposed rules are set forth in Appendices A and B to the FCC Order, which are set forth in Attachment A hereto.

or other dollar amounts have to be paid by carriers or customers and to whom such amounts must be paid.

For example, the Commission's proposed rules would require BA-PA to remove and recourse up to two months of a customer's billed charges from an alleged slammer IXC, regardless of the dates of these calls, and provide the disclosures set forth above. Under the FCC's liability rules, BA-PA would advise a complaining customer that if he has been slammed, he is absolved of liability for unpaid charges imposed by the slammer IXC for services provided during the first 30 days after the unauthorized change.<sup>7</sup> For slammer IXC charges imposed after this 30-day period, the customer would forward to his authorized IXC copies of bills containing such charges for rerating at the authorized IXC's rates, and would then be obligated to pay these rerated charges to the authorized IXC.<sup>8</sup> For charges paid to the slammer IXC, the customer could recover from his authorized carrier the difference between these charges and the authorized carrier's rerated charges, provided that the alleged slammer IXC did not provide proof of verification of the customer's authorization to change carriers and the authorized IXC was able to recover the payments made to the slammer IXC.<sup>9</sup>

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<sup>7</sup>47 C.F.R. Sec. 64.1100(d). The customer could be rebilled these charges by the authorized IXC if that IXC after investigating a timely claim by the alleged slammer IXC determines that the customer was not subjected to an unauthorized carrier change. Payment of these charges would then be sent to the alleged slammer IXC. *Id.* at Sec. 64.1180.

<sup>8</sup>47 C.F.R. Sec. 64.1100(d) (1).

<sup>9</sup>47 C.F.R. Secs. 64.1100(d)(2) and 64.1170(a) and (d). Though the reimbursement to the customer would not increase, the FCC's proposed liability rule changes would permit the authorized IXC to recover from the alleged slammer IXC twice the amount of charges paid by the customer for charges incurred during the first 30 days after the unauthorized carrier change (as well as an amount equal to all subsequent charges paid by the customer) or, if the customer has not paid such charges, an amount equal to

The FCC's comprehensive slamming liability rules, when implemented, will unquestionably replace the existing and more broad-brush "remove and recourse charges" approach that the Commission proposes to codify in its proposed slamming rules. Given the inherent conflicts between these two different regulatory courses of action for dealing with slamming, the Commission should reconsider adopting its proposed rules, lest it subject BA-PA, other Pennsylvania LECs and IXCs to state rules that cannot be met in complying with the federal rules and vice-versa. At the very least, the Commission should defer adopting its proposed rules pending the FCC's implementation of its slamming liability rules and when that occurs, if the Commission concludes that state slamming rules are necessary or desirable, modify the Commission's proposed rules to conform to the FCC's rules and eliminate conflicts.<sup>10</sup>

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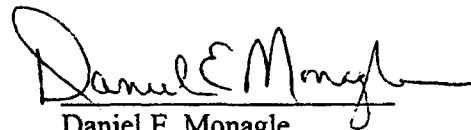
what the alleged slammer IXC would have charged the customer for charges incurred during this 30-day period. Proposed 47 C.F.R. Secs. 64.1100(c) and (d)(2) and 64.1170(a), (a)(2)(A) and (d).

<sup>10</sup>One such conforming change might include replacing the Commission's proposed Section 64.23(b)(7) requirement that LECs maintain records of customer allegations of slamming for three years with a requirement that periodic reports the FCC proposes to require from all carriers on the number of slamming complaints each has received from its customers also be submitted to the Commission by Pennsylvania carriers. See FCC Order at para. 179; proposed 47 C.F.R. Sec. 64.1100(f) (this proposed rule was inadvertently omitted from Appendix B to the FCC Order but is based on the reporting provision included in a Senate anti-slamming bill, S. 1618, Sec. 101(k), a copy of which provision is set forth in Attachment B hereto). Bell Atlantic has told the FCC that slamming complaints are less precise than slamming determinations, and that if the FCC wants carrier reports, it should limit them to reports from authorized carriers of the purported slams they have investigated and found to be valid; such reports would reflect actual cases of slamming, not uninvestigated allegations. Comments of Bell Atlantic on Further Notice filed March 18, 1999, pp. 7-8. These reports also would better support the Commission's desire to have timely evidence of slamming to bring an action or prosecution against an IXC for slamming violations. Proposed Rulemaking Order at 49. Even if the FCC rejects this change, the Commission's mirroring an FCC slamming complaint reporting requirement for all Pennsylvania carriers would still give the Commission a more complete picture of the Pennsylvania slamming universe, since many customers lodge slamming complaints directly with their authorized IXC, rather than with their LEC, especially where the IXC handles its own billing inquiry. Such a conforming requirement, like others the Commission might make if it elects to adopt state slamming rules, also would aid Bell Atlantic in rolling out uniform procedures and mechanized tracking mechanisms throughout its 14-state footprint to ensure compliance with federal and state slamming rules.

For the foregoing reasons, BA-PA recommends that the Commission's proposed cramming rules be adopted with one clarifying change, but that adoption of its proposed slamming rules be reconsidered or at least deferred due to the conflicts between the proposed state and adopted federal slamming rules.

Respectfully submitted,

Of Counsel:  
Julia A. Conover



Daniel E. Monagle  
1717 Arch Street, 32 N.W.  
Philadelphia, PA 19103  
(215) 963-6004

Attorney for  
Bell Atlantic-Pennsylvania, Inc.

Dated: June 28, 1999

ATTACHMENT A. FCC ADOPTED AND PROPOSED JAMMING RULES

**APPENDIX A**

**RULES AMENDED**

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

**Subpart K - Changes in Preferred Telecommunications Service Providers**

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

**§64.1150 Verification of Orders for Telecommunications Service**

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or

(b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of

the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

**§64.1160 Letter of Agency Form and Content**

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

**§ 64.1100 Changes in Subscriber Carrier Selections**

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.



(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for

service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section 64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) Submitting carrier: a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) Executing carrier: an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays

in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Subpart.

#### **§ 64.1170 Reimbursement Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) Subscriber Refunds or Credits. Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) Restoration of Premium Programs. Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

### **§ 64.1180 Investigation Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

### **§ 64.1190 Preferred Carrier Freezes**

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the

carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from

the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv).

Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.



## APPENDIX B

### PROPOSED RULE CHANGES

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is proposed to be amended as follows:

1. Part 64, Subpart K, is proposed to be amended by modifying section 64.1100(c), (d), and adding subsection (f) to read as follows:

#### **§ 64.1100 Changes in Subscriber Carrier Selections**

....

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the verification procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier for amounts as prescribed in section 64.1170 of this Subpart, as well as for:

(1) If the subscriber has paid charges to the unauthorized carrier, an amount equal to double the charges paid by such subscriber to the submitting carrier for charges incurred during the first 30 days after the unauthorized change, as well as an amount equal to all subsequent charges paid by the subscriber; or

(2) If the subscriber has not paid charges to the unauthorized carrier, an amount equal to what the unauthorized carrier would have charged the subscriber for charges incurred during the first 30 days after the unauthorized change.

The remedies provided in this Subpart are in addition to any other remedies available by law.

....

(d) (2) If the subscriber has already paid charges to the unauthorized carrier, the subscriber shall receive a refund or credit of all charges paid to such carrier, in accordance with the procedures set forth in section 64.1170 of this Subpart. The liability provisions of this subsection shall not apply if the subscriber's authorized carrier does not receive from the unauthorized carrier the amount described in section 64.1170(a)(2)(A) or the amount described in section 64.1170(d)(1)(B).

2. Part 64, Subpart K, is further proposed to be amended by modifying section 64.1170 to read as follows:

**§ 64.1170 Reimbursement Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

.....

(2) The following:

(A) If the subscriber has paid charges to the unauthorized carrier, an amount equal to double the charges paid by the subscriber to the unauthorized carrier for charges incurred during the first 30 days after the unauthorized change and an amount equal to all subsequent charges paid by the subscriber. If the subscriber has not paid charges to the unauthorized carrier, an amount equal to the charges that the unauthorized carrier billed or would have billed to the subscriber for charges incurred during the first 30 days after the unauthorized change; and

.....

(d) Compensation for the Subscriber.

(1) Within ten days of receipt of the amount described in subsection (a)(2)(A) above, the authorized carrier shall provide a complete refund or credit to the subscriber of all charges paid by the subscriber to the unauthorized carrier. If the authorized carrier does not receive the amount described in subsection (a)(2)(A), then the authorized carrier is not required to provide a complete refund or credit to the subscriber. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

3. Part 64, Subpart K, is further proposed to be amended by adding section 64.1195 to read as follows:

**§ 64.1195 Registration Requirement**

(a) **Applicability.** A telecommunications carrier shall not begin to provide interstate telecommunications service unless it has filed a registration with the Commission in accordance with subsection (b) and had such registration approved by the Commission.

(1) Any telecommunications carrier already providing service on the effective date of these rules shall comply with the registration requirements of subsection (b) within 90 days of the effective date of these rules. The provision of service shall not be affected by the filing of the registration.

(b) **Contents of registration.** The registration shall contain the following information:

(1) the carrier's business address;

(2) the names and addresses of all officers and other principals;

(3) a statement of the carrier's financial viability;

(4) a verification that the carrier, its officers, and other principals have no prior history of committing fraud on the public.

(c) **Approval or Rejection of Registration.** Any registration shall be deemed approved by the Commission 30 days after filing unless the Commission issues an order rejecting or suspending such registration. The Commission may reject or suspend such registration for any of the reasons identified in subsection (d) of this section.

(d) **Revocation or Suspension of Operating Authority.** After notice and opportunity to respond, the Commission may revoke or suspend the authorization of any telecommunications carrier to provide service upon any of the following grounds:

(1) the carrier fails to file the registration in accordance with subsection (a) of this section; or

(2) the carrier provides materially false or incomplete information in the course of the registration required by subsection (a) of this section ; or

(3) the carrier, or any predecessor in interest, or any of its officers or other principals has failed to pay a forfeiture imposed for violations of section 258.

ATTACHMENT B. EXCERPT FROM SENATE SLAMMING BILL S. 1618

105TH CONGRESS  
2D SESSION

# S. 1618

---

## AN ACT

To amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Anti-slamming Amend-  
5 ments Act".

# TITLE I—SLAMMING

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SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.

(a) VERIFICATION OF AUTHORIZATION.—Subsection

(a) of section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

~~“(a) PROHIBITION.—~~

~~“(1) IN GENERAL.—No telecommunications carrier or reseller of telecommunications services shall 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 this section and such verification procedures as the Commission shall prescribe.~~

~~“(2) VERIFICATION.—~~

~~“(A) IN GENERAL.—In order to verify a subscriber’s selection of a telephone exchange service or telephone toll service provider under this section, the telecommunications carrier or reseller shall, at a minimum, require the subscriber—~~

~~“(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question,~~

1 ~~tion of a provider of telephone exchange service or~~  
2 ~~telephone toll services than are imposed under this~~  
3 ~~section.~~

4       “(2) EFFECT ON STATE COURT PROCEED-  
5 ~~INGS.—Nothing contained in this section shall be~~  
6 ~~construed to prohibit an authorized State official~~  
7 ~~from proceeding in State court on the basis of an al-~~  
8 ~~leged violation of any general civil or criminal stat-~~  
9 ~~ute of such State or any specific civil or criminal~~  
10 ~~statute of such State not preempted by this section.~~

11       “(3) LIMITATIONS.—Whenever a complaint is  
12 ~~pending before the Commission involving a violation~~  
13 ~~of regulations prescribed under this section, no State~~  
14 ~~may, during the pendency of such complaint, insti-~~  
15 ~~tute a civil action against any defendant party to the~~  
16 ~~complaint for any violation affecting the same sub-~~  
17 ~~scriber alleged in the complaint.~~

18       “(k) REPORTS ON COMPLAINTS.—

19       “(1) REPORTS REQUIRED.—Each telecommuni-  
20 ~~cations carrier or reseller shall submit to the Com-~~  
21 ~~mission, quarterly, a report on the number of com-~~  
22 ~~plaints of unauthorized changes in providers of tele-~~  
23 ~~phone exchange service or telephone toll service that~~  
24 ~~are submitted to the carrier or reseller by its sub-~~  
25 ~~scribers. Each report shall specify each provider of~~

1 service complained of and the number of complaints  
2 relating to such provider.

3 “(2) LIMITATION ON SCOPE.—The Commission  
4 may not require any information in a report under  
5 paragraph (1) other than the information specified  
6 in the second sentence of that paragraph.

7 “(3) UTILIZATION.—The Commission shall use  
8 the information submitted in reports under para-  
9 graph (1) to identify telecommunications carriers or  
10 resellers that engage in patterns and practices of un-  
11 authorized changes in providers of telephone ex-  
12 change service or telephone toll service.

13 ~~“(1) DEFINITIONS.—For purposes of this section.~~

14 ~~“(1) ATTORNEY GENERAL.—The term ‘attorney  
15 general’ means the chief legal officer of a State.~~

16 ~~“(2) SUBSCRIBER.—The term ‘subscriber’  
17 means the person named on the billing statement or  
18 account, or any other person authorized to make  
19 changes in the providers of telephone exchange serv-  
20 ice or telephone toll service.”.~~

21 ~~(f) REPORT ON CARRIERS EXECUTING UNAUTHOR-  
22 IZED CHANGES OF TELEPHONE SERVICE.—~~

23 ~~(1) REPORT.—Not later than October 31,  
24 1998, the Federal Communications Commission  
25 shall submit to Congress a report on unauthorized~~

CERTIFICATE OF SERVICE

I, Daniel E. Monagle, hereby certify that I have this day served the foregoing Comments of Bell Atlantic – Pennsylvania, Inc. upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 28<sup>th</sup> day of June 1999.

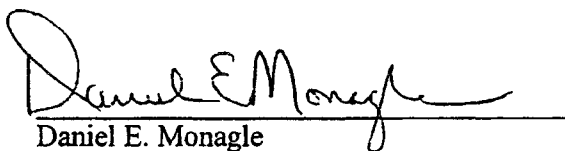
VIA U.S. MAIL – FIRST CLASS

Terrence Buda, Esq.  
Pennsylvania Public Utility Commission  
Law Bureau  
North Office Building, G30  
North Street & Commonwealth Avenue  
Harrisburg, PA 17120

Bernard Ryan, Esq.  
Small Business Advocate  
Commerce Building, Suite 1102  
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Daniel E. Monagle  
Attorney for  
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1717 Arch Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(215) 963-6004





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

June 30, 1999

IN REPLY PLEASE  
REFER TO OUR FILE

The Honorable John R. McGinley, Jr.  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harrisstown II  
333 Market Street  
Harrisburg, PA 17101

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Legal

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Re: L-990140, M-981063/57-204  
Proposed Rulemaking Re  
Cramming and Slamming  
52 Pa. Code Chapter 64

Dear Chairman McGinley:

Enclosed is one (1) copy of comments received regarding the above regulation as required under Section 5(10)(b.1) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19).

Very truly yours,

Barbara Bruin  
Executive Director

Comments submitted by:

Sprint  
PUC Office of Trial Staff  
Conectiv Communications, Inc.  
Office of Consumer Advocate  
Bell Atlantic - Pennsylvania, Inc.

cc: Chief Counsel Pankiw  
Regulatory Coordinator DelBiondo  
Assistant Counsel Buda  
Ms. Ragonese



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TELECOMMUNICATIONS

1201 Walnut Bottom Road  
P.O. Box 1201  
Carlisle, Pennsylvania 17015-0505  
Telephone (717) 245-6312

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Sandusky  
Legal

June 25, 1999

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Avenue and North Street  
Harrisburg, PA 17105-3265

Re: Docket No. M-00981063, Interim Guidelines for  
Standardizing Local Exchange Companies Responses to  
Customer Contacts Alleging Unauthorized Changes to the  
Customer's Telecommunications Service Provider and  
Unauthorized Charges Added to the Customer's Bill.

HS KK

Dear Secretary McNulty:

On May 29, 1999, notice was published in the Pennsylvania Bulletin soliciting public comment in the above-referenced proceeding. At this time, The United Telephone Company of Pennsylvania and Sprint Communications Company, L.P. (collectively referred to herein as "Sprint") have no further comments other than what was submitted previously at Docket No. M-00981063. Sprint reserves the right, however, to submit comments in the proposed rulemaking at Docket No. L-00990140, as appropriate.

Please time-stamp the additional, enclosed copy of this letter with the date of June 25, 1999, as evidenced on the attached Certificate of Mailing, and return it to me in the enclosed, self-addressed, stamped envelope.

Respectfully Submitted

John G. Short

JGS/pn

cc: Terrence Buda  
Peggy Hartman  
Janice Ragonese  
Louis Sauer

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**COPY**

IN RE: Proposed Rulemaking - :  
Modification to 52 Pa. Code §64 : Commission Docket No.  
Cramming and Slamming : L-990140

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Legal

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COMMENTS OF  
CONECTIV COMMUNICATIONS, INC.

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PA.P.U.C.  
SECRETARY'S BUREAU

Conectiv Communications, Inc. ("Conectiv") a certificated telecommunications provider within the Commonwealth of Pennsylvania, hereby files these comments in accordance with the directive of this Commission as published in the May 29, 1999 Pennsylvania Bulletin.

Introduction

In general, Conectiv supports the Commission's efforts to establish standard procedures providing a remedy for consumers who are billed for services not received ("cramming") or have their telecommunications provider changed without authorization ("slamming"). Conectiv believes it is important, however, that any rules promulgated by the Commission be consistent with any cramming and slamming rules which the Federal Communications Commission ("FCC") may adopt in response to the May 17, 1999 stay of the liability provisions of the FCC's slamming rules by the U.S. Court of Appeals for the District of Columbia Circuit. In

the absence of a consistent liability scheme that telecommunications carriers throughout the country actually can implement, Conectiv supports the Commission's development of a process for responding to consumer complaints.

Specific comments: Section 64.29(b)

Conectiv's specific comments on the proposed regulations relate primarily to the slamming provisions – proposed Section 64.29(b). This section establishes a procedure for addressing a customer's allegation that "slamming has occurred on one or both of the past two bills rendered to the customer". Conectiv believes that the proposed regulations also should specify the carrier's responsibilities in the event that the customer delays informing the carrier for a period of time beyond the customer's receipt of the second bill reflecting charges by an unauthorized carrier.

In the alternative, the Commission should establish a time period after which the customer would be precluded from receiving a free switch-back. For example, a customer could have its long distance service switched from carrier A to carrier B in January, utilize that service until June, and then inform the LEC that "slamming" occurred. In such event, the LEC would be required to switch the customer back at no charges since the "slamming" occurred on both of the last two bills. The regulations should specify clearly that a customer who acquiesces in the carrier change for more than 90 days would not receive the protections provided in the rules.

**Proposed Modification:**

(b) *Slamming*. Upon contact from the customer alleging that slamming has occurred ~~within the time period covered by~~ ~~on~~ one or both of the past two bills (but no later than 90 ~~days after the issuance of the bill reflecting the alleged~~ ~~slam~~) rendered to a customer by the LEC, regardless of the dates of the calls, the LEC shall do the following:

Section 64.29(b)(3)

Proposed Section 64.29(b)(3) would require a telecommunications carrier in responding to a customer's report of slamming to "[i]nform the customer that the isolated charges will be removed from the LEC bill and returned to the IXC or its billing agent". Conectiv recommends that this provision be changed to require the LEC simply to remove the charges from the LEC bill. The requirement to return the usage to the IXC should be eliminated in light of the fact that not all carriers' billing systems have the ability to return the usage to the IXC or its billing agent. Further, this information is one of the internal mechanics of billing between companies. Customer confusion could result if the LEC were required to convey billing arrangements between companies to the customer. However, the failure to convey this information to the customer does not result in customer detriment.

**Proposed Modification:**

(3) Inform the customer that the isolated charges will be removed from the LEC bill ~~and returned to the IXC or its billing agent.~~

Sections 64.29(a)(5) and 64.29(b)(6)

Proposed Sections 64.29(a)(5) and 64.29(b)(6) would require a telecommunications carrier to provide to requesting customers information regarding how to contact the FCC or the Consumer Protection Division of the Attorney General's office in the event the customer expresses an interest in pursuing a complaint against the unauthorized carrier. These provisions should specify that the carrier may provide this contact information orally or in writing.

**Proposed Modifications:**

**64.29(a)(5)**

Provide to customers who indicate a desire to receive complaint disclosure information, adequate ~~oral or written~~ information about how to about how to pursue the complaint against the service provider or billing agent by contacting the Bureau of Consumer Protection, (800) 441-2555, of the Pennsylvania Office of Attorney General, the Federal Communications Commission and the Federal Trade Commission.

**64.29(b)(6)**

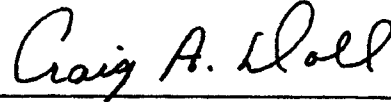
Provide to customers who indicate a desire to receive complaint disclosure information, adequate ~~oral or written~~ information about how to about how to pursue a complaint against the IXC or billing agent, or both, by contacting the Federal Communications Commission or the Bureau of Consumer Protection, (800) 441-2555, of the Pennsylvania Office of Attorney General.

Conclusion

Conectiv remains committed to the provision of telecommunications services that benefit rather than confuse customers and appreciates the opportunity to comment on these proposed regulations. As stated at the outset, Conectiv is

concerned that as a multi jurisdictional operating entity, slamming and cramming rules may differ from jurisdiction to jurisdiction. As this area of concern is not a static one and is being addressed throughout the nation and at the Federal level, Conectiv urges this Commission to reconsider and revise these regulations as necessary upon the FCC's revision of the liability provisions of its cramming and slamming rules in response to the Court of Appeals' stay order.

Respectfully submitted,



---

Craig A. Doll, Esquire  
214 State Street  
Harrisburg, PA 17101-1132

(717) 230-9555

Attorney I.D. #22814

Attorney for Conectiv  
Communications, Inc.

**Bell Atlantic - Pennsylvania, Inc.**  
Strawberry Square, Fourth Floor  
Harrisburg, Pennsylvania 17101  
717 777-4813 Fax 717 777-5610  
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**Ronald F. Weigel**  
Director  
Government Relations



June 30, 1999

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Legal

John R. McGinley, Jr.  
Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Dear Chairman McGinley:

Re: Rulemaking Re Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Changes to the Customer's Telecommunications Service Provider and Unauthorized Charges Added to Customer's Bill, Docket No. L-00990140

Please find enclosed a copy of Bell Atlantic's comments that were filed with the Public Utility Commission on June 28, 1999 regarding the above Proposed Regulation.

We appreciate your consideration as it goes into final form and, as always, the assistance we receive on all regulations is most appreciated.

Sincerely,

A handwritten signature in cursive script that reads 'Ronald F. Weigel'.

Attachment

99 JUN 30 PM 2:53  
RECEIVED



Bell Atlantic – Pennsylvania, Inc.  
1717 Arch Street, 32nd Floor  
Philadelphia, Pennsylvania 19103  
Voice: (215) 963-6004  
Facsimile: (215) 563-2658

Daniel E. Monagle  
Assistant General Counsel

99 JUN 30 PM 7: 53



June 28, 1999

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Legal

Via Federal Express

James J. McNulty, Esq.  
Pennsylvania Public Utility Commission  
North Office Building, Rm. B-20  
North Street & Commonwealth Avenue  
Harrisburg, PA 17120

Re: Rulemaking Re Standardizing Local Exchange Company  
Responses to Customer Contacts Alleging Unauthorized  
Changes to the Customer's Telecommunications Service  
Provider and Unauthorized Charges Added to the  
Customer's Bill, Docket No. L-00990140

Dear Mr. McNulty:

Enclosed for filing with the Commission in the above-captioned proceeding are an original and fifteen (15) copies of the Comments of Bell Atlantic – Pennsylvania, Inc.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel E. Monagle".

Daniel E. Monagle

DEM/dkf

Enc.

cc: Attached Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Standardizing Local :  
Exchange Company Responses to Customer :  
Contacts Alleging Unauthorized Changes : Docket No. L-00990140  
to the Customer's Telecommunications :  
Service Provider and Unauthorized Charges :  
Added to the Customer's Bill :

COMMENTS OF BELL ATLANTIC-PENNSYLVANIA, INC.

As in its Comments filed on July 24, 1998 in the Interim Guidelines docket,<sup>1</sup> Bell Atlantic-Pennsylvania, Inc. (BA-PA), applauds the Commission's efforts to protect Pennsylvania telecommunications consumers from the evils of cramming and slamming, first by voluntary guidelines and now by proposed rules codifying the guidelines and making them mandatory. BA-PA has dealt aggressively with slamming for the past several years to shield its customers from this practice, and, as the Commission is aware, Bell Atlantic over the past 18 months has instituted a series of measures in all Bell Atlantic jurisdictions, including Pennsylvania, to crack down on the cramming problem.<sup>2</sup> Based in part on its experience in dealing with both of these unlawful practices, BA-PA

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<sup>1</sup>Docket No. M-00981063. BA-PA's Comments in this companion docket are incorporated by reference into BA-PA's Comments here, to the extent they remain pertinent to the Commission's proposed cramming and slamming regulations and are consistent with BA-PA's Comments here.

<sup>2</sup>In early July, Bell Atlantic plans to publically announce that all Bell Atlantic OTC customers now have the option to limit miscellaneous charges on their bills (the category of charges which can include crammer charges) to those imposed only by certain service providers – namely, Bell Atlantic itself and the customer's intraLATA and interLATA toll providers. Bell Atlantic began rolling out this major enhancement to its aggressive anti-cramming program on June 21 by advising customers lodging cramming complaints with BA-PA and other Bell Atlantic OTCs of the availability of this miscellaneous billing block option..

believes that the proposed cramming regulations, with one clarifying change proposed below, are appropriate and should be adopted. BA-PA recommends that the Commission reconsider the adoption of its proposed slamming rules, or at least defer such adoption pending the FCC's implementation of its comprehensive liability slamming rules, because there are currently conflicts between the proposed state rules and the federal rules which would make it impossible for BA-PA and other Pennsylvania LECs and IXC's to comply with both sets of rules.

Proposed cramming rule Section 64.23(a)(5) would require LECs to provide customers who indicate a desire to receive cramming complaint disclosure information with adequate information about how to pursue their cramming complaints by contacting "the Pennsylvania Office of Attorney General, the Federal Communications Commission, and the Federal Trade Commission." While the Proposed Rulemaking Order (at 23) recognizes that the intent of this rule is to facilitate the filing of "a complaint with a regulatory agency or other appropriate entity" by customers who may wish to do so, the language of the proposed rule suggests that these customers receive information about how to file multiple complaints with all three of the entities listed. BA-PA suggests that this rule be clarified by changing the quoted language above to read "the Pennsylvania Office of Attorney General, the Federal Communications Commission, or the Federal Trade Commission, as appropriate." This change would properly limit complaint disclosure information to that pertaining to the appropriate complaint forum, depending on the nature of the cramming charges complained about.<sup>3</sup> With this one rule

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<sup>3</sup>See discussion of complaint jurisdictional divisions in BA-PA's Comments in Docket No. M-00981063 at pages 5-6.

clarification, BA-PA supports the Commission's adoption of its proposed cramming rules.<sup>4</sup>

The FCC has both adopted and proposed additional detailed, comprehensive slamming rules to enforce the Telecommunications Act of 1996 prohibition of slamming (47 U.S.C. Sec. 258).<sup>5</sup> These rules include complex slamming liability rules<sup>6</sup> which conflict in certain material respects with various proposed Commission slamming regulations – most notably, Secs. 64.23(b)(3), (4) and (5). The Commission's proposed rules call for LECs to simply remove alleged slammer IXC charges from a customer's bill and recourse them back to the IXC, advising the customer that the LEC will instruct the IXC to stop further billing to the customer and that removal of the charges does not guarantee the IXC will not use other collection remedies to recover these charges. The FCC's adopted liability rules, by contrast, lay out a completely different and substantially more granular procedure to determine slamming liability or nonliability and what charges

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<sup>4</sup>In its Proposed Rulemaking Order (at 14-15, 21), the Commission clarified that the prevention of "any further billing of those charges or types of charges to the customer's account" sought to be achieved in proposed cramming rule Section 64.23(a)(3) applies only to recurring charges for the crammed service the customer has complained about, and does not extend to other crammer charges or types of charges. This clarification makes it unnecessary to modify the language of the rule.

<sup>5</sup>In Re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking (hereafter "FCC Order"), CC Docket No. 94-129 (Released Dec. 23, 1998), and adopted and proposed rules at Appendices A and B, respectively.

<sup>6</sup>The adopted liability rules – at 47 C.F.R. Secs. 64.1100(c) and (d), 64.1170 and 64.1180 – were scheduled to become effective on May 17, 1999, but have been stayed pending the FCC's disposition of pending petitions for reconsideration of these rules and further order of the court. MCI WorldCom, Inc., v. FCC, September Term 1998, No. 99-125 (D.C. Cir. May 18, 1999). The FCC Order also includes an proposed rulemaking which, inter alia, proposes changes to 47 C.F.R. Secs. 64.1100(c) and (d)(2) and 64.1170(a), (a)(2)(A), and (d) of the adopted liability rules. Copies of these liability rules and proposed rules are set forth in Appendices A and B to the FCC Order, which are set forth in Attachment A hereto.

or other dollar amounts have to be paid by carriers or customers and to whom such amounts must be paid.

For example, the Commission's proposed rules would require BA-PA to remove and recourse up to two months of a customer's billed charges from an alleged slammer IXC, regardless of the dates of these calls, and provide the disclosures set forth above. Under the FCC's liability rules, BA-PA would advise a complaining customer that if he has been slammed, he is absolved of liability for unpaid charges imposed by the slammer IXC for services provided during the first 30 days after the unauthorized change.<sup>7</sup> For slammer IXC charges imposed after this 30-day period, the customer would forward to his authorized IXC copies of bills containing such charges for rerating at the authorized IXC's rates, and would then be obligated to pay these rerated charges to the authorized IXC.<sup>8</sup> For charges paid to the slammer IXC, the customer could recover from his authorized carrier the difference between these charges and the authorized carrier's rerated charges, provided that the alleged slammer IXC did not provide proof of verification of the customer's authorization to change carriers and the authorized IXC was able to recover the payments made to the slammer IXC.<sup>9</sup>

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<sup>7</sup>47 C.F.R. Sec. 64.1100(d). The customer could be rebilled these charges by the authorized IXC if that IXC after investigating a timely claim by the alleged slammer IXC determines that the customer was not subjected to an unauthorized carrier change. Payment of these charges would then be sent to the alleged slammer IXC. Id. at Sec. 64.1180.

<sup>8</sup>47 C.F.R. Sec. 64.1100(d)(1).

<sup>9</sup>47 C.F.R. Secs. 64.1100(d)(2) and 64.1170(a) and (d). Though the reimbursement to the customer would not increase, the FCC's proposed liability rule changes would permit the authorized IXC to recover from the alleged slammer IXC twice the amount of charges paid by the customer for charges incurred during the first 30 days after the unauthorized carrier change (as well as an amount equal to all subsequent charges paid by the customer) or, if the customer has not paid such charges, an amount equal to

The FCC's comprehensive slamming liability rules, when implemented, will unquestionably replace the existing and more broad-brush "remove and recourse charges" approach that the Commission proposes to codify in its proposed slamming rules. Given the inherent conflicts between these two different regulatory courses of action for dealing with slamming, the Commission should reconsider adopting its proposed rules, lest it subject BA-PA, other Pennsylvania LECs and IXCs to state rules that cannot be met in complying with the federal rules and vice-versa. At the very least, the Commission should defer adopting its proposed rules pending the FCC's implementation of its slamming liability rules and when that occurs, if the Commission concludes that state slamming rules are necessary or desirable, modify the Commission's proposed rules to conform to the FCC's rules and eliminate conflicts.<sup>10</sup>

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what the alleged slammer IXC would have charged the customer for charges incurred during this 30-day period. Proposed 47 C.F.R. Secs. 64.1100(c) and (d)(2) and 64.1170(a), (a)(2)(A) and (d).

<sup>10</sup>One such conforming change might include replacing the Commission's proposed Section 64.23(b)(7) requirement that LECs maintain records of customer allegations of slamming for three years with a requirement that periodic reports the FCC proposes to require from all carriers on the number of slamming complaints each has received from its customers also be submitted to the Commission by Pennsylvania carriers. See FCC Order at para. 179; proposed 47 C.F.R. Sec. 64.1100(f) (this proposed rule was inadvertently omitted from Appendix B to the FCC Order but is based on the reporting provision included in a Senate anti-slaming bill, S. 1618, Sec. 101(k), a copy of which provision is set forth in Attachment B hereto). Bell Atlantic has told the FCC that slamming complaints are less precise than slamming determinations, and that if the FCC wants carrier reports, it should limit them to reports from authorized carriers of the purported slams they have investigated and found to be valid; such reports would reflect actual cases of slamming, not uninvestigated allegations. Comments of Bell Atlantic on Further Notice filed March 18, 1999, pp. 7-8. These reports also would better support the Commission's desire to have timely evidence of slamming to bring an action or prosecution against an IXC for slamming violations. Proposed Rulemaking Order at 49. Even if the FCC rejects this change, the Commission's mirroring an FCC slamming complaint reporting requirement for all Pennsylvania carriers would still give the Commission a more complete picture of the Pennsylvania slamming universe, since many customers lodge slamming complaints directly with their authorized IXC, rather than with their LEC, especially where the IXC handles its own billing inquiry. Such a conforming requirement, like others the Commission might make if it elects to adopt state slamming rules, also would aid Bell Atlantic in rolling out uniform procedures and mechanized tracking mechanisms throughout its 14-state footprint to ensure compliance with federal and state slamming rules.

For the foregoing reasons, BA-PA recommends that the Commission's proposed cramming rules be adopted with one clarifying change, but that adoption of its proposed slamming rules be reconsidered or at least deferred due to the conflicts between the proposed state and adopted federal slamming rules.

Respectfully submitted,

Of Counsel:  
Julia A. Conover



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Philadelphia, PA 19103  
(215) 963-6004

Attorney for  
Bell Atlantic-Pennsylvania, Inc.

Dated: June 28, 1999

ATTACHMENT A. FCC ADOPTED AND PROPOSED SLAMMING RULES

APPENDIX A

RULES AMENDED

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

**Subpart K - Changes in Preferred Telecommunications Service Providers**

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

**§64.1150 Verification of Orders for Telecommunications Service**

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

- (a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or
- (b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or
- (c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of



the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

**§64.1160 Letter of Agency Form and Content**

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

**§ 64.1100 Changes in Subscriber Carrier Selections**

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for

service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section 64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) Submitting carrier: a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) Executing carrier: an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays

in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Subpart.

#### **§ 64.1170 Reimbursement Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) Subscriber Refunds or Credits. Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) Restoration of Premium Programs. Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

### **§ 64.1180 Investigation Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

### **§ 64.1190 Preferred Carrier Freezes**

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the

carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from



the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv).

Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

## APPENDIX B

### PROPOSED RULE CHANGES

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is proposed to be amended as follows:

1. Part 64, Subpart K, is proposed to be amended by modifying section 64.1100(c), (d), and adding subsection (f) to read as follows:

#### **§ 64.1100 Changes in Subscriber Carrier Selections**

.....

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the verification procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier for amounts as prescribed in section 64.1170 of this Subpart, as well as for:

- (1) If the subscriber has paid charges to the unauthorized carrier, an amount equal to double the charges paid by such subscriber to the submitting carrier for charges incurred during the first 30 days after the unauthorized change, as well as an amount equal to all subsequent charges paid by the subscriber; or
- (2) If the subscriber has not paid charges to the unauthorized carrier, an amount equal to what the unauthorized carrier would have charged the subscriber for charges incurred during the first 30 days after the unauthorized change.

The remedies provided in this Subpart are in addition to any other remedies available by law.

.....

(d) (2) If the subscriber has already paid charges to the unauthorized carrier, the subscriber shall receive a refund or credit of all charges paid to such carrier, in accordance with the procedures set forth in section 64.1170 of this Subpart. The liability provisions of this subsection shall not apply if the subscriber's authorized carrier does not receive from the unauthorized carrier the amount described in section 64.1170(a)(2)(A) or the amount described in section 64.1170(d)(1)(B).

2. Part 64, Subpart K, is further proposed to be amended by modifying section 64.1170 to read as follows:

### **§ 64.1170 Reimbursement Procedures**

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

....

(2) The following:

(A) If the subscriber has paid charges to the unauthorized carrier, an amount equal to double the charges paid by the subscriber to the unauthorized carrier for charges incurred during the first 30 days after the unauthorized change and an amount equal to all subsequent charges paid by the subscriber. If the subscriber has not paid charges to the unauthorized carrier, an amount equal to the charges that the unauthorized carrier billed or would have billed to the subscriber for charges incurred during the first 30 days after the unauthorized change; and

....

(d) Compensation for the Subscriber.

(1) Within ten days of receipt of the amount described in subsection (a)(2)(A) above, the authorized carrier shall provide a complete refund or credit to the subscriber of all charges paid by the subscriber to the unauthorized carrier. If the authorized carrier does not receive the amount described in subsection (a)(2)(A), then the authorized carrier is not required to provide a complete refund or credit to the subscriber. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

3. Part 64, Subpart K, is further proposed to be amended by adding section 64.1195 to read as follows:

### **§ 64.1195 Registration Requirement**

(a) **Applicability.** A telecommunications carrier shall not begin to provide interstate telecommunications service unless it has filed a registration with the Commission in accordance with subsection (b) and had such registration approved by the Commission.

(1) Any telecommunications carrier already providing service on the effective date of these rules shall comply with the registration requirements of subsection (b) within 90 days of the effective date of these rules. The provision of service shall not be affected by the filing of the registration.

(b) **Contents of registration.** The registration shall contain the following information:

(1) the carrier's business address;

(2) the names and addresses of all officers and other principals;

(3) a statement of the carrier's financial viability;

(4) a verification that the carrier, its officers, and other principals have no prior history of committing fraud on the public.

(c) **Approval or Rejection of Registration.** Any registration shall be deemed approved by the Commission 30 days after filing unless the Commission issues an order rejecting or suspending such registration. The Commission may reject or suspend such registration for any of the reasons identified in subsection (d) of this section.

(d) **Revocation or Suspension of Operating Authority.** After notice and opportunity to respond, the Commission may revoke or suspend the authorization of any telecommunications carrier to provide service upon any of the following grounds:

(1) the carrier fails to file the registration in accordance with subsection (a) of this section; or

(2) the carrier provides materially false or incomplete information in the course of the registration required by subsection (a) of this section ; or

(3) the carrier, or any predecessor in interest, or any of its officers or other principals has failed to pay a forfeiture imposed for violations of section 258.

ATTACHMENT B. EXCERPT FROM SENATE SLAMMING BILL S. 1618

105TH CONGRESS  
2D SESSION

# S. 1618

---

## AN ACT

To amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Anti-slamming Amend-  
5 ments Act".

**TITLE I—SLAMMING**

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**SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.**

(a) **VERIFICATION OF AUTHORIZATION.**—Subsection (a) of section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

~~“(a) **PROHIBITION.**—~~  
~~“(1) **IN GENERAL.**—No telecommunications carrier or reseller of telecommunications services shall 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 this section and such verification procedures as the Commission shall prescribe.~~

~~“(2) **VERIFICATION.**—~~  
~~“(A) **IN GENERAL.**—In order to verify a subscriber’s selection of a telephone exchange service or telephone toll service provider under this section, the telecommunications carrier or reseller shall, at a minimum, require the subscriber—~~

~~“(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question,~~

1 ~~tion of a provider of telephone exchange service or~~  
 2 ~~telephone toll services than are imposed under this~~  
 3 ~~section.~~

4 ~~“(2) EFFECT ON STATE COURT PROCEED-~~  
 5 ~~INGS.—Nothing contained in this section shall be~~  
 6 ~~construed to prohibit an authorized State official~~  
 7 ~~from proceeding in State court on the basis of an al-~~  
 8 ~~leged violation of any general civil or criminal stat-~~  
 9 ~~ute of such State or any specific civil or criminal~~  
 10 ~~statute of such State not preempted by this section.~~

11 ~~“(3) LIMITATIONS.—Whenever a complaint is~~  
 12 ~~pending before the Commission involving a violation~~  
 13 ~~of regulations prescribed under this section, no State~~  
 14 ~~may, during the pendency of such complaint, insti-~~  
 15 ~~tute a civil action against any defendant party to the~~  
 16 ~~complaint for any violation affecting the same sub-~~  
 17 ~~scriber alleged in the complaint.~~

18 ~~“(k) REPORTS ON COMPLAINTS.—~~

19 ~~“(1) REPORTS REQUIRED.—Each telecommuni-~~  
 20 ~~cations carrier or reseller shall submit to the Com-~~  
 21 ~~mission, quarterly, a report on the number of com-~~  
 22 ~~plaints of unauthorized changes in providers of tele-~~  
 23 ~~phone exchange service or telephone toll service that~~  
 24 ~~are submitted to the carrier or reseller by its sub-~~  
 25 ~~scribers. Each report shall specify each provider of~~



1 service complained of and the number of complaints  
2 relating to such provider.

3 “(2) LIMITATION ON SCOPE.—The Commission  
4 may not require any information in a report under  
5 paragraph (1) other than the information specified  
6 in the second sentence of that paragraph.

7 “(3) UTILIZATION.—The Commission shall use  
8 the information submitted in reports under para-  
9 graph (1) to identify telecommunications carriers or  
10 resellers that engage in patterns and practices of un-  
11 authorized changes in providers of telephone ex-  
12 change service or telephone toll service.

13 ~~“(1) DEFINITIONS.—For purposes of this section.~~

14 ~~“(1) ATTORNEY GENERAL.—The term ‘attorney  
15 general’ means the chief legal officer of a State.~~

16 ~~“(2) SUBSCRIBER.—The term ‘subscriber’  
17 means the person named on the billing statement or  
18 account, or any other person authorized to make  
19 changes in the providers of telephone exchange serv-  
20 ice or telephone toll service.”.~~

21 ~~(f) REPORT ON CARRIERS EXECUTING UNAUTHOR-  
22 IZED CHANGES OF TELEPHONE SERVICE.—~~

23 ~~(1) REPORT.—Not later than October 31,  
24 1998, the Federal Communications Commission  
25 shall submit to Congress a report on unauthorized~~

CERTIFICATE OF SERVICE

I, Daniel E. Monagle, hereby certify that I have this day served the foregoing Comments of Bell Atlantic – Pennsylvania, Inc. upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 28<sup>th</sup> day of June 1999.

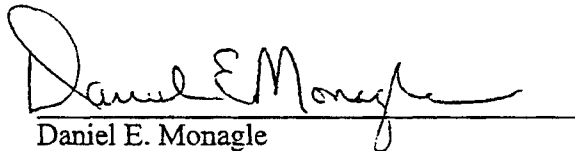
VIA U.S. MAIL – FIRST CLASS

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OFFICE OF TRIAL STAFF.  
Legal Division

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Pennsylvania Public Utility Commission  
Post Office Box 3265  
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(717) 787-1976  
Fax: (717) 772-2677

Charles Daniel Shields  
Senior Prosecutor

Shields Direct Dial: (717) 783-6151  
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June 28, 1999

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265

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**Re: Rulemaking Re Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Changes to the Customer's Telecommunications Service Provider and Unauthorized Charges Added to the Customer's Bill**  
Docket No: L-00990140

**Interim Guidelines for Standardizing Local Exchange Company Responses**  
Docket No: M-00981063

Dear Mr. McNulty:

Enclosed for filing, please find an original and fifteen (15) copies of the Comments of the Office of Trial Staff in the above captioned proposed rulemaking proceeding.

Copies of this document will also be either hand-delivered or sent by first class mail to the Commission's Law Bureau and Bureau of Consumer Services.

Sincerely,

Charles Daniel Shields  
Senior Prosecutor

cc: Law Bureau  
Bureau of Consumer Services

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re Standardizing	:	
Local Exchange Company Responses to	:	
Customer Contacts Alleging Unauthorized Changes	:	Docket No: L-00990140
to the Customer's Telecommunications Service Provider	:	
and Unauthorized Charges Added to the Customer's Bill	:	
	:	
Interim Guidelines for Standardizing Local Exchange	:	Docket No: M-00981063
Company Responses	:	

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**COMMENTS  
OF THE  
OFFICE OF TRIAL STAFF**

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SECRETARY'S BUREAU

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission") respectfully submits the following Comments in response to the publication of the Commission's proposed rulemaking to standardize local exchange company ("LEC") responses to customer contacts alleging cramming and slamming. Said publication of the proposed regulations and received written comments occurred on May 29, 1999, in the Pennsylvania Bulletin, Volume 29, No. 22, pp. 2779-2791. The Commission had originally adopted the Proposed Rulemaking Order and Final Interim Guidelines at its Public Meeting held January 14, 1999.

The Commission has recently delegated to the Office of Trial Staff the authority to investigate and potentially prosecute incidents of customer complaints of slamming in cramming in the Commonwealth. OTS respectfully contends that the proposed language changes will facilitate the performance of such delegated duties and responsibilities.

**Proposed Cramming Provisions**

OTS respectfully suggest that the Commission amend the language of the last section of the proposed regulations dealing with cramming, at §64.23(a)(6) of Annex A, as follows:

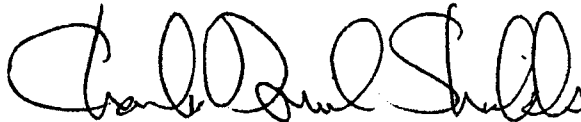
**(6) Maintain for a minimum of three years records of the all customer complaints of cramming in order to monitor adherence to the terms of the billing contract the local exchange carrier has with the service provider and/or billing agent relating to cancellation of the contract for excessive cramming complaints. Reports summarizing such records shall be submitted quarterly to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus.**

**Proposed Slamming Provisions**

OTS proposes that the Commission amend the language of the last section of the proposed regulations dealing with slamming, at §64.23(b)(6) of Annex A, as follows:

**(7) Maintain for a minimum of three years records of the all customer allegations of slamming. Reports summarizing such records shall be submitted quarterly to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus.**

Respectfully submitted,



---

Charles Daniel Shields  
Senior Prosecutor  
Office of Trial Staff

Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, PA 17105-3265

Dated: June 28, 1999

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COPY

Proposed Rulemaking Order & Final :  
Interim Guidelines Re: LEC Responses :  
to Customer Contacts Alleging : Docket No. L-00990140  
Unauthorized Changes to the :  
Customer's Telecommunications :  
Service Provider and Unauthorized :  
Charges Added to the Customer's Bill :

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Philip F. McClelland  
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For:  
Irwin A. Popowsky  
Consumer Advocate

Office of Attorney General  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: June 28, 1999

## I. INTRODUCTION

The Office of Consumer Advocate (“OCA”) submits these Comments concerning the Pennsylvania Public Utility Commission (“PUC” or “Commission”) Order in Re: Proposed Rulemaking Order and Final Interim Guidelines On Slamming and Cramming, which was published in the Pennsylvania Bulletin on May 29, 1999, 29 Pa.B. at 2779-2791.

Throughout the past several years, the OCA has received hundreds of complaints from victims of slamming and cramming actions by various telecommunications providers and has attempted to offer assistance in correcting the unauthorized provision of service and billing problems. The OCA submits that the rulemaking concerning these issues and the Final Interim Guidelines (hereafter “Guidelines”) are a major step in the right direction of ensuring that consumers are provided with the information necessary to deal with these persistent problems. The OCA commends the Commission for taking this proactive approach and fully supports the issuance of the Guidelines to address this pernicious problem. The OCA also suggests that the rules concerning responses to allegations of slamming could be strengthened, as explained below.

Moreover, once these Guidelines are issued, the OCA submits that it would also be appropriate for the Commission, as the agency responsible for protection of the public against unlawful practices of utility companies, to consider additional steps to prevent the practices of slamming and cramming themselves. We would note that at least thirty-two other states have enacted statutes or promulgated regulations explicitly prohibiting these fraudulent practices. See Appendix A. The absence of specific regulations prohibiting slamming sends the wrong signal to those telecommunications carriers who engage in such fraudulent practices.

In addition, the importance of expanding the rules to encompass actions by LECs in the emerging competitive local market cannot be overstated. *See* OCA Comments of July 24, 1998 at 5-6. The OCA would note that allegations of local service slamming involve transactions and service which are completely intrastate in nature and should be prohibited by this Commission.

The OCA respectfully requests that the Commission consider the Comments below as it moves forward with the proposed rulemaking.



## II. COMMENTS

### A. Cramming

#### 1. The Commission Has Appropriately Exercised Jurisdiction To Regulate LEC Responses to Alleged Cramming Incidents.

In its Initial Order, the Commission invited comment on the extent of its jurisdiction over complaints involving cramming. 29 Pa.B. 2781. Although several commenters argued either that the Commission lacked jurisdiction entirely -- or that it should not exercise its jurisdiction in light of industry self-policing efforts -- the Commission correctly recognized its responsibility and duty to the consumers in this Commonwealth to provide a means to eliminate crammed charges from their bills, at a minimum. 29 Pa.B. 2780. The proposed rules thus require the LEC to identify the specific charge related to the cram, inform the customer that the charge will be recouped to the service provider or billing agent and to instruct the billing agent or service provider that further billing of the charges should be prevented. 29 Pa.B. at 2790. This rule eliminates one of the most frustrating aspects for consumers of correcting the cram, *i.e.*, attempting to contact the company actually responsible for the unlawful charge. Placing this responsibility on the LEC is an important aspect of quick and effective resolution of cramming complaints and the OCA supports this provision.

The Commission necessarily refrained from attempting to address all aspects of the *cramming* problems at this juncture. Many companies ultimately responsible for crams are not public utilities over which the PUC has jurisdiction, yet they have billing arrangements with the LECs to collect the charges related to their goods or services. As the Commission clearly has jurisdiction over the LECs and customer bills, requiring certain LEC responses to customer

complaints about crammed charges are a perfectly appropriate response to this pervasive problem. It should be noted that a LEC may only provide billing services for other carriers on condition that the LEC assumes responsibility for settling disputes concerning accounts receivable. 52 Pa. Code § 64.22. Through this proposed rulemaking, the Commission will impose a similar condition concerning billing services for providers of goods and services *other than* those offered by telecommunications carriers. Although the ultimate dispute may not be fully resolved between the customer and the crammer, recouping the charge and preventing recurrence of the charge on future bills should resolve any issues between the consumer and the LEC. A Guideline such as this concerning cramming seems thoroughly warranted.

2. The Commission Should Require Disclosure To The Customer That Service May Not Be Terminated For Refusal To Pay Crammed Charges.

The OCA initially commented that, in addition to the information to be provided by the LEC to the customer following the cramming complaint, the customer ought to also be informed that local service cannot be terminated for non-payment of crammed charges. OCA Comments, July 24, 1998 at 1-2. The Commission did not adopt this suggestion, asserting (1) that the charges are to be removed from the bill and (2) that the suspension notice provision of Chapter 64 already requires the customer to be informed of the part of an arrearage that, if unpaid, will lead to termination. 52 Pa. B. 2781, citing 52 Pa. Code §64.72.

In response, the OCA would point out that, although the charges are to be removed from the bill, this may not always occur and, even if it does, the charges may appear again. The customer may uncover other crammed charges on past bills, justifying refund requests. The fact that the charges will, in some cases, be removed is not a justification for

failing to give customers important information about their rights. Moreover, the Chapter 64 disclosure requirement does nothing to inform a consumer at the point of first contact with the LEC about the consequence of not paying crammed charges - a suspension notice may issue months later or may *never* be forthcoming. The OCA urges the Commission to reconsider requiring the LEC to explicitly disclose, upon the initial cramming complaint, that the customer may not to be terminated for nonpayment of such disputed charges.

Essentially, cramming has been able to proliferate because it is hard to detect and consequently has proved to be a profitable, albeit unlawful, practice. Customers lack experience in dealing with the inclusion of unregulated service charges on their phone bills and the charges are sometimes inconspicuously or vaguely described on LEC bills. Most customers pay these bills in full every month, often without scrutinizing them, because they assume the charges on their bills are regulated by some authority. Although termination of basic service for nonpayment of charges unrelated to basic service is impermissible in Pennsylvania, 52 Pa. Code § 64.63(1), many consumers are unaware of this fact. Consumers should be made aware at the earliest possible time that disputing crammed charges on a current bill - or requesting refunds for previously undetected crammed charges -- will not jeopardize their continued telephone service.

Requiring notice to customers that their service may not be terminated for nonpayment of crammed charges would be harmless, would increase customer knowledge of their basic rights and could, along with the other anti-cramming provisions, aid in deterring the practice.

3. **The Commission Should Require That LECs Provide Complaint Information To All Customers Who Allege Cramming, Not Just Those Who Specifically Request Such Information.**

In its Interim Guidelines, the Commission required the LEC, among other actions, to do the following:

**Provide adequate notice of a customer's right to pursue the complaint against the service provider or billing agent by contacting the Pennsylvania Office of Attorney General, the Federal Communications Commission and the Federal Trade Commission; . . .**

28 Pa. B. at 3179. In Comments, Bell Atlantic - Pennsylvania (BA-PA) argued that this requirement would be time-consuming, potentially confusing and unnecessary. PTA objected to this requirement as well, believing that it would require the LEC to "make a judgment call" about the nature of the customer's complaint. 29 Pa. B. 2783. In response, the Commission modified the provision as follows:

**Provide to customers who indicate a desire to receive complaint disclosure information adequate information about how to pursue the complaint against the service provider or billing agent by contacting the Bureau of Consumer Protection, (800) 441-2555, of the Pennsylvania Office of Attorney General, the Federal Communications Commission and the Federal Trade Commission.**

29 Pa. B. 2790. The OCA submits that the requirement to provide customers complaint information should not be limited to customers who specifically request it. Many customers are unaware of their right to file a complaint and would not even know to ask for such information. Such a disclosure requirement would be beneficial to all consumers, but particularly those who remain dissatisfied with the outcome of the LEC's response to their cramming complaint. Perhaps an appropriate middle ground would be to require the LEC to *offer* complaint information to those who call alleging cramming. For many consumers, correcting the telephone

bill on which the crammed charge appears will not sufficiently resolve the situation, as the company may attempt to collect the charge through other means. It would be especially important for customers alleging cramming to have the information they need to protect themselves if further collection action is taken.

The OCA thus opposes the limitation of this provision to disclosing complaint information *only* to customers who ask for it. The LECs should, at a minimum, be required to offer information about where to file complaints to those who call with cramming complaints.

**B. Slamming**

1. **The Commission Should Consider Additional Regulations To Expressly Prohibit The Practice Of Slamming, As Well As Regulating LEC Responses To Allegations Of Slamming.**

The Telecommunications Act of 1996 (TA-96) states as follows:

**(A) PROHIBITION.**--No telecommunications carrier shall 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. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

47 U.S.C. § 258 (Section 258). This statute has been in effect since February 8, 1996. Clearly, the United States Congress anticipated that state commissions would be interested in regulatory actions to prevent unauthorized changes in customers' telephone service to the extent they have jurisdiction to do so. Indeed, thirty-two states have enacted statutes or promulgated regulations which prohibit or penalize acts of unauthorized switching by telecommunications carriers. *See* Appendix A. In a further effort to deter the practice, several states have fined carriers who engage in unauthorized switching repeatedly,. *See, e.g., In Re: Initiation of Show Cause*

Proceedings Against Excel Telecommunications, Inc. for Violation of Rule 25-4.118, Interexchange Carrier Selection, Docket No. PSC-98-1000-SC-TI, 1998 WL 604285 (Fla. P.S.C.). Pending before this Commission is a complaint proceeding in which the formal complainants seek the imposition of fines against an alleged slammer. Gaige v. AT&T, Docket No. C-981211. This Commission has also recognized the need for greater enforcement efforts in that additional prosecutory authority has been delegated to the Commission's Office of Trial Staff. 29 Pa. B. 2740. Consistent with the federal statute, this Commission has the power to take actions against slammers to enforce the rules promulgated by the FCC, as the vast majority of phone bills involve both intrastate and interstate charges. *See* 47 C.F.R. §64.1150.

It should be noted, however, that although the FCC promulgated anti-slamming regulations which are stricter than prior versions (47 C.F.R. §64.1150), the verification rules have temporarily been stayed pending appeal to the United States District Court for the District of Columbia. Petitions for Reconsideration of the Stay are also pending before the federal court. In addition, MCI Worldcom, Inc., along with several other carriers, has moved for a waiver of the FCC anti-slamming rules, pending consideration of its proposal to establish a "third-party administrator" (TPA) for resolution of all customer slamming complaints. In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996, Docket No. 94-129.

Despite the several proceedings now pending at the federal level as to the verification rules, the OCA submits that this Commission nonetheless has the authority to take action against slammers pursuant to the Public Utility Code and there should be no hesitation in proposing a rule to make clear that the Commission intends to use that authority, consistent with

federal law. Slamming is wrong, violates consumers' rights and is an unfair act of competition as well. In addition to promulgating the currently proposed guidelines, the Commission should propose additional regulations that would make it clear that the unauthorized switching of customers' telephone service from the carrier of their choice is unlawful, constitutes a violation of Section 1501, and is subject to penalties as set forth in the Public Utility Code. 66 Pa.C.S. §§1501, 3301.

2. The Commission Should Expand The Scope Of The Proposed Regulation To Apply To Slamming By LECs Themselves To Forestall The Possible Proliferation Of Such Unlawful Practices In the Emerging Local Markets.

In initial Comments, the OCA offered that any PUC action against slamming should apply with equal force to unauthorized switches by local exchange carriers. OCA Comments of July 24, 1998 at 5-6. The PTA also noted that any guidelines and rules should apply to both ILECs and CLECs as a matter of regulatory parity. PTA Comments at 1. Nonetheless, the Commission failed to modify the Final Interim Guidelines in response to this comment and the internal inconsistency in the Guidelines remains in the text, now proposed to become a regulation.

The definitions in the Final Interim Guidelines reference slamming as an action that may occur with regard to any telephone service. "Slamming" is defined as the "unauthorized changing of a customer's telecommunication provider, whether for local exchange service, intraLATA toll or interLATA toll." 29 Pa. B. at 2790. The OCA supports this broad definition, which is consistent with Section 258's prohibition on unauthorized switches of any service, exchange or toll. As discussed above, the Commission has jurisdiction to act to prevent

unauthorized switches, whatever the type of intrastate service.

The remedies set forth in the Guidelines, however, do not encompass the slamming of local exchange service; they address only situations in which a consumer contacts a LEC complaining of slamming by an IXC -- not situations in which the LEC itself has slammed a customer from the LEC of his or her choice. The Commission should broaden the Guidelines to apply to LECs as well.

In response to this Comment, the Commission stated only that "there are already remedies in place under the Chapter 64 residential service standards to deal with a LEC that would include unauthorized charges of its own on its bill." 29 Pa.B. 2781. While Chapter 64 imposes the general "obligation of good faith, honesty and fair dealing," it does not contain any specific language regarding actual incidents of slamming and cramming (rather than the resulting fraudulent billing) by LECs themselves. *See* 52 Pa Code §§ 64.1 *et seq.* The Chapter 64 regulations set forth standards and billing practices for residential phone service and would apply to a situation in which a customer disputes a bill including slamming or cramming charges; however, no existing regulation explicitly addresses slamming by LECs.



3. The Commission Appropriately Modified The Guidelines To Require A PIC-Freeze Safeguard Only Upon The Customer's Request.

The initial Interim Guidelines recommended that the LEC “. . .[o]ffer to restore the customer's account, at no charge, to the IXC the customer had received service from prior to the unauthorized switch, and to place a safeguard on the customer's account to prevent the local exchange carrier from processing an IXC request for a switch without the local exchange carrier obtaining express authorization from the customer.” 28 Pa.B. 3180. The “safeguard” referred to is also known as a “PIC-lock” or a “PIC-freeze.” The OCA expressed concern in Comments about the potential for abuse of such safeguards in that the LEC could overuse them to render it more difficult for switches to be carried out and thus gain an unfair competitive advantage. OCA Comments of July 24, 1998 at 3. Several other Comments also expressed similar concerns and cautions about the potential anticompetitive use of such safeguards.

The OCA thus supports the change in this provision to clarify that the safeguard is only to be placed on the account by the LEC “at the request of the customer.” 29 Pa.B. 2790. As stated in earlier Comments, it is the customer that has authority over his or her account and not the carrier - thus, placing a PIC-lock on an account unbeknownst to the customer should not be permitted. The OCA supports the change in the Final Interim Guidelines which permits the safeguard to be placed on the account only “at the customer's request.”

4. Customers Alleging Slamming Should Be Provided Complaint Information And Should Be Informed That They Can Also File A Complaint With The PUC, As Well As The FCC And The Bureau of Consumer Protection of the Office of Attorney General.

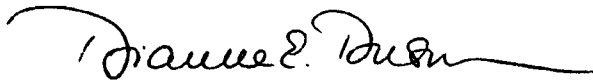
As noted above in Section A.3. with respect to *cramming*, it is unnecessary and potentially detrimental to consumers to provide information about filing complaints *only* to those who specifically ask for it. This applies with equal force to customers complaining of *slamming*. Many customers are unaware of the potential for taking further action if dissatisfied with the outcome of the LEC action, as stated earlier – and those who may be aware of the right to file a complaint may not know which is the appropriate agency or may not think to ask. Requiring disclosure of the right to file a complaint to those who call complaining of slamming can do no harm. This provision should be broadened to require the disclosure across-the-board or, at a minimum, to offer the information to all those with slamming complainants, as suggested above with respect to cramming.

The OCA would add that slamming complainants should also be advised that they may file complaints with the Public Utility Commission, as well as the FCC or the Attorney General's Bureau of Consumer Protection. As was noted earlier, most telephone bills will involve both intrastate and interstate toll charges, and in such cases, the PUC certainly has jurisdiction to act. Consumers should be advised of all available options, including the complaint process at the PUC.

### III. CONCLUSION

The OCA submits that the Final Interim Guidelines are an important step in protecting consumers against slamming and cramming. The OCA submits that the Commission should take this step immediately, but should also begin to consider additional ways in which it can provide protections, promote fair competition and deter the practices of slamming and cramming. The OCA respectfully requests that the Commission consider these Comments as it moves forward with the proposed rulemaking.

Respectfully submitted,



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June 28, 1999

# Appendix A

APPENDIX A

1.	Alabama	1997-S	Ala. Code § 8-19B-1.
2.	Alaska	1998-R	Alaska Admin. Code tit. 3, §§ 53.260, .299; §§ 42.05.561, .571.
3.	Arkansas	1997-S	Ark. Code Ann. § 23-17-411 (Michie).
4.	California	1998-S	Cal. Pub. Util. Code § 2889.5 (West).
5.	Colorado	1998-S	Colo. Rev. Stat. Ann. § 40-15-112.
6.	Connecticut	1999-S	Conn. Gen. Stat. § 16-256i.
7.	Florida	1998-S	Fla. Stat. Ann. § 364.603 (West).
		1998-R	Fla. Admin. Code Ann. r. 25-4.118.
8.	Georgia	1998-S	Ga. Code Ann. §§ 46-5-183-186, -188-192; §§ 46-2-91-93.
9.	Hawaii	1998-S	Haw. Rev. Stat. Ann. §§ 269-16.92, -28.
10.	Idaho	1998-S	Idaho Code §§ 48-603D, 605-607.
		1993-R	Idaho Admin. Code § 31.41.01.603.
11.	Illinois	1996-S	220 Ill. Comp. Stat. Ann. 5/13-902.
12.	Indiana	1998-S	Ind. Code §§ 8-1-2-107,-109,-112; §§ 8-1-29-5-8; § 34-28-5-4.
		1999-R	Ind. Admin. Code tit. 170, r. 7-1.1-19.
13.	Kentucky	1998-S	Ky. Rev. Stat. Ann. §§ 278.535, .990(1).
14.	Louisiana	1997-S	La. Rev. Stat. Ann. § 45:1166.
15.	Maine	1998-S	Me. Rev. Stat. Ann. tit. 35-A, § 7106.
16.	Massachusetts	1998-S	Mass. Gen. Laws Ann. ch. 93, §§ 109-112.
17.	Michigan	1998-S	Mich. Comp. Laws §§ 484.2505-.2506, .2601-.2602 (West).
18.	Minnesota	1998-S	Minn. Stat. Ann. §§ 237.66, .661-.662; § 325F.693.
		1998-R	Minn. R. 7811.1200.
19.	Missouri	1998-S	Mo. Ann. Stat. § 392.540 (West).
20.	Montana	1997-S	Mont. Code Ann. §§ 69-3-1303-1305.
21.	Nevada	1995-R	Nev. Admin. Code ch. 704, § 68028.
22.	New Hampshire	1998-S	N.H. Rev. Stat. Ann. § 374:28-a.
23.	New Jersey	1998-S	N.J. Stat. Ann. § 56:8-87-:8-91 (West).
24.	New York	1997-S	N.Y. Pub. Serv. Law § 92-e (McKinney).
25.	South Dakota	1997-S	S.D. Codified Laws § 37-30A-9, -13 -14, -16.
		1998-R	S.D. Admin. R. 20:10:34:01.
26.	Tennessee	1998-S	Tenn. Code Ann. § 65-4-125.
27.	Texas	1997-S	Tex. Util. Code Ann. § 55.001; §§ 15.023, .024 (West).
		1997-R	16 Tex. Admin. Code § 23.106 (West).
28.	Utah	1997-R	Utah Code Ann. § R746-349-5.
29.	Vermont	1997-S	Vt. Stat. Ann. tit. 30 §208a, § 30.
30.	Washington	1997-R	Wash. Admin. Code § 480-120-139.
31.	Wisconsin	1997-R	Wis. Admin. Code § 168.13.
32.	Wyoming	1998-S	Wyo. Stat. Ann. § 37-15-412 (Michie).

note: "S" represents the word "statute"; "R" represents the word "regulation".

CERTIFICATE OF SERVICE

Re: Proposed Rulemaking Order and Final Interim Guidelines  
Re: Cramming and Slamming  
Docket No. L-00990140

I hereby certify that I have this day served a true copy of the foregoing document, Comments of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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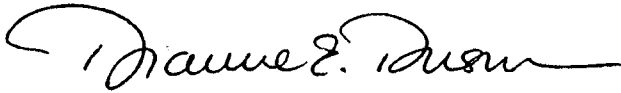
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