

2001 DRAFTING REQUEST

Bill

Received: **02/25/2001**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **John Stolzenberg**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Unfair trade practices in telecommunications

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gibsom 02/28/2001			_____			
/P1	rkite 09/20/2001	wjackson 09/21/2001	kfollet 09/21/2001	_____	lrb_docadmin 09/21/2001		State
/1	rkite 11/28/2001	hhagen 12/05/2001	kfollet 12/06/2001	_____	lrb_docadmin 12/06/2001		State
/2	rkite	hhagen	jfrantze	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/30/2002	01/30/2002	01/30/2002	_____	01/30/2002	02/01/2002	
				_____		lrb_docadmin	
				_____		02/01/2002	

FE Sent For: act intro 2/15

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Leg. Council*

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		<i>12hmb 1/30/02</i>	<i>J 1/30</i>	<i>Self 1/30</i>			

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(Leg. Council)*

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/?	gibsom 02/28/2001						
/P1	rkite 09/20/2001	wjackson 09/21/2001 <i>11 kmh 12/4/01</i>	kfollet 09/21/2001 <i>KJL 12/6</i>		lrb_docadmin 09/21/2001 <i>KJL/pg 12/6</i>		
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Alt. Drafters:

Subject: Trade Regulation - other

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/?	gibsom	/p1 WJ 9/21	KJ 9/21	8/1/99 9/21			

FE Sent For:

<END>

Gibson-Glass, Mary

From: Stolzenberg, John
Sent: Thursday, February 22, 2001 9:54 AM
To: Gibson-Glass, Mary
Subject: Drafting Request on "Slamming" and "Cramming"

Mary,

Katie Plona on Rep. Jon Richards staff asked me to submit this draft to you as drafting instructions for a bill for him. This draft is on telecommunications "slamming" and "cramming." It contains the reference to the remedies in the FCC's regulations that we previously discussed.

Let me know if you'd like me to walk through the draft with you at your convenience.

John



WLC 0035-2.pdf

John Stolzenberg, Staff Scientist
Wisconsin Legislative Council Staff
P.O. Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988 Fax: 608-266-3830
John.Stolzenberg@legis.state.wi.us

1 **AN ACT** to amend 100.207 (1), 100.207 (3) (a), 100.207 (6) (b) 1. and 100.207 (6) (c);
2 and to create 100.207 (1), (a) and (b), 100.207 (3) (d) and 100.207 (3m) of the
3 statutes; relating to: remedies and penalties for violation of telecommunications
4 services requirements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This draft revises the telecommunications service requirements under s. 100.207, Stats., and the related remedies and penalties provisions for violation of these requirements.

The draft expands the telecommunications service requirements in current law to: (a) explicitly require that a person may not enroll a customer in any telecommunications service that the customer did not affirmatively request; and (b) establish that a customer's request to be enrolled in a telecommunications service or a bundle of telecommunications service, does not constitute an affirmative request to be enrolled in a different telecommunications service.

The draft establishes that a customer's affirmative order or request for a telecommunications service may be made orally, electronically or in writing. (This authorization is currently set forth in s. ATCP 123, Wis. Adm. Code). the draft also requires that if a customer's order or request is made electronically, such as by pressing the switchboard on a telephone, then to be an affirmative order or request, the customer must order or request the service in an action distinct from and prior to the initial activation of the service by the customer.

The draft [directs] [authorizes] the department of agriculture, trade and consumer protection (DATCP) to specify by rule procedures for a telecommunications provider to submit, verify and charge on behalf of the person's selection of a telecommunications provider that are consistent with the federal communications commission's (FCC) regulations on these procedures. These rules must include the specified FCC remedies for violation of the procedures.

The draft establishes that, in general, no telecommunications provider may submit, verify or execute a change in a person's selection of a

telecommunications provider in violation of s. 100.207 or the DATCP's rules adopted under this section.

The draft establishes that temporary injunctive relief may include an order requiring the escrowing of payments from subscribers received by a person as a result of practices allegedly in violation of s. 100.207 or ch. 196, stats.

The draft increases the maximum forfeiture for a violation of s. 100.207 from \$5,000 to \$10,000. The draft also establishes that for offenses involving an unlawful change of a telecommunications provider, commonly referred to as "slamming", and for an unlawful billing for a telecommunication service that a customer did not affirmatively request, commonly referred to as "cramming", each day of the provision of telecommunications service following the unlawful change or billing is deemed a separate offense.

1 **SECTION 1.** 100.207 (1) of the statutes is amended to read:

2 100.207 (1) ~~DEFINITION DEFINITIONS.~~ In this section, ~~"telecommunications:~~

3 (c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

4 **SECTION 2.** 100.207 (1), (a) and (b) of the statutes are created to read:

5 100.207 (1) "Commercial mobile radio service provider" has the meaning given in s.
6 196.01 (2g).

7 (b) "Telecommunications provider" has the meaning given in s. 196.01 (8p).

8 **SECTION 3.** 100.207 (3) (a) of the statutes is amended to read:

9 100.207 (3) (a) A person may not engage in negative option billing or negative
10 enrollment of telecommunications services, including unbundled telecommunications
11 services.

12 1. A person may not bill a customer for any telecommunications service that the
13 customer did not affirmatively order unless that service is required to be provided by law, the
14 federal communications commission or the public service commission.

if ask for specific service, this is all that is being asked for

1 2. A person may not enroll a customer in any telecommunications service that the
 2 customer did not affirmatively request. A customer's failure to refuse a person's proposal to
 3 provide a telecommunications service is not an affirmative request for that
 4 telecommunications service. A customer's request to be enrolled in a telecommunications
 5 service, or bundle of telecommunications services, is not an affirmative request to be enrolled
 6 in a different telecommunications service.

7 SECTION 4. 100.207 (3) (d) of the statutes is created to read:

8 100.207 (3) (d) A customer's affirmative order or affirmative request for a
 9 telecommunications service may be made orally, electronically or in writing. A customer's
 10 order or request for a telecommunications service made electronically is an affirmative order
 11 or request if the customer orders or requests the service in an action distinct from and prior
 12 to the initial activation of the service by the customer. ?

13 SECTION 5. 100.207 (3m) of the statutes is created to read:

14 100.207 (3m) UNAUTHORIZED CHANGING OF TELECOMMUNICATIONS PROVIDERS. (a) The
 15 department [may] [shall] by rule specify procedures for a telecommunications provider to
 16 submit, verify and execute a change on behalf of a person's selection of a telecommunications
 17 provider that are consistent with the regulations adopted by the Federal Communications
 18 Commission under 47 USC section 258. The department shall include in the rule promulgated
 19 under this paragraph the remedies for violation of the procedures that are consistent with the
 20 remedies in the Federal Communications Commission's regulations and are identified in par.
 21 (d).

22 (b) 1. Except as provided in subd. 2., the department shall exempt commercial mobile
 23 radio service providers from the verification procedures in the rules adopted under par. (a).

*eg. pushing *123 to "activate" service*



1 2. The exemption in subd. 1. does not apply to a commercial mobile radio service
2 provider if the Federal Communications Commission requires the provider to provide equal
3 access to common carriers of the provision of telephone toll services under 47 USC 332 (c)
4 8.

5 (c) No telecommunications provider may submit, verify or execute a change in a
6 person's selection of a telecommunications provider in violation of this section or rules
7 adopted by the department under this section.

8 (d) The remedies specified by the department by rule under par. (a) that are based on
9 the federal communications commission's regulations shall be limited to all of the following:

10 1. A telecommunications provider that violates par. (c) shall be liable to the person's
11 properly authorized telecommunications provider in an amount equal to 150% of all charges ✓
12 that the person paid to the telecommunications provider that violated par. (c) after the violation
13 occurred.

14 2. If the person has not already paid charges to the telecommunications provider that ✓
15 violates par. (c), the person shall be absolved of liability for charges imposed by the
16 telecommunications provider during the first 30 days after the unauthorized change.

17 3. If the person has paid charges to the telecommunications provider that violates par.
18 (c) and the person's properly authorized telecommunications provider receives payment from ✓
19 the telecommunications provider that violates par. (c), the authorized telecommunications
20 provider shall refund or credit to the person 50% of all charges paid by the person to the
21 telecommunications provider that violates par. (c).

22 4. If the person is absolved of liability for charges under subd. 2., the
23 telecommunications provider that violates par. (c) shall be liable to the person for any charge
24 required to return the person to his or her properly authorized telecommunications provider.

Dave Ghilardi - DATCP

He believes that s. 100.207 in current law satisfies the FCC that DATCP is the designated agency

But he ~~is~~ will get back to me to let me know if they want the draft to say that DATCP is the designee

The main objective is to incorporate the remedies ~~from~~ from the FCC regs. into WI law

isn't necessary to refer to the FCC or FCC regs. in the statutes

David Ghilardi -

does not want draft to specify DATCP as the FCC agency because DATCP already believes it has the authority to administer these rules

but DATCP does want the directive to promulgate rules - i.e. use "shall", not "may"

Kite, Robin

From: Gibson-Glass, Mary
Sent: Monday, March 05, 2001 5:01 PM
To: Kite, Robin
Subject: FW: Drafting Request on "Slamming" and "Cramming"

In cleaning out my e-mail inbox, I found this and thought you might want it. I think John Stolzenberg will be very helpful on this draft.

-----Original Message-----

From: Stolzenberg, John
Sent: Thursday, February 22, 2001 9:54 AM
To: Gibson-Glass, Mary
Subject: Drafting Request on "Slamming" and "Cramming"

Mary,

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Let me know if you'd like me to walk through the draft with you at your convenience.

John



WLC 0035-2.pdf

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Wisconsin Legislative Council Staff
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John.Stolzenberg@legis.state.wi.us



(soon)

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2638/P1

RNK: /.....

WLJ

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GEN

1

AN ACT ...; relating to: prohibited actions by telecommunications providers

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 100.207 (1)¹ of the statutes is renumbered 100.207 (1) (intro.) and

3

amended to read:

4

100.207 (1) (intro.) **DEFINITION DEFINITIONS.** In this section,

5

"telecommunications service"¹ (c) "Telecommunications service"² has the meaning

6

given in s. 196.01 (9m).¹

History: 1993 a. 496; 1995 a. 27.

7

SECTION 2. 100.207 (1) (a) of the statutes is created to read:

8

100.207 (1) (a) "Commercial mobile radio service provider" has the meaning

9

given in s. 196.01 (8p).²⁹

1 SECTION 3. 100.207 (1) (b) of the statutes is created to read:

2 100.207 (1) (b) "Telecommunications provider" means a telecommunications
3 provider as defined in s. 196.01 (8p)[↓] or an authorized person who acts on behalf of
4 or at the direction of a telecommunications provider.

5 SECTION 4. 100.207 (1) (b)^d of the statutes is created to read:

6 100.207 (1) (b)^d "Unauthorized telecommunications provider" means a
7 telecommunications provider that submits, verifies, or executes a [↓]change in a
8 person's selection of a telecommunications provider that the person did not
9 affirmatively request to be made.

10 SECTION 5. 100.207 (2)[↓] of the statutes is amended to read:

11 100.207 (2) ADVERTISING AND SALES REPRESENTATIONS. A ~~person~~
12 telecommunications provider may not make in any manner any statement or
13 representation with regard to the provision of telecommunications service, including
14 the rates, terms[↓] or conditions for telecommunications service, which is false,
15 misleading[↓] or deceptive, or which omits to state material information with respect
16 to the provision of telecommunications service that is necessary to make the
17 statement not false, misleading[↓] or deceptive.

History: 1993 a. 496; 1995 a. 27.

18 SECTION 6. 100.207 (3) (a)[↓] of the statutes is amended to read:

19 100.207 (3) (a) A ~~person~~ telecommunications provider may not engage in
20 negative option billing or negative enrollment of telecommunications services,
21 including unbundled telecommunications services. A ~~person~~ telecommunications
22 provider may not bill a customer for any telecommunications service that the
23 customer did not affirmatively order unless that service is required to be provided
24 by law, the federal communications commission[↓] or the public service commission.

1 A customer's failure to refuse a person's telecommunications provider's proposal to
2 provide a telecommunications service is not an affirmative request for that
3 telecommunications service.

4 History: 1993 a. 496; 1995 a. 27.

SECTION 7. 100.207 (3) (b) of the statutes is amended to read:

5 100.207 (3) (b) A ~~person~~ telecommunications provider may not charge a
6 customer for telecommunications service provided after the customer has canceled
7 that telecommunications service.

8 History: 1993 a. 496; 1995 a. 27.

SECTION 8. 100.207 (3) (c) of the statutes is amended to read:

9 100.207 (3) (c) A ~~person~~ telecommunications provider shall provide a customer
10 who has ordered a telecommunications service through an oral solicitation with
11 independent confirmation of the order within a reasonable time.

12 History: 1993 a. 496; 1995 a. 27.

SECTION 9. 100.207 (3) (d) of the statutes is created to read:

13 100.207 (3) (d) 1. A customer may affirmatively request a telecommunications
14 service orally, in writing, or by electronic means.

15 2. Notwithstanding subd. 1, a telecommunications provider may not provide
16 a telecommunications service to a person who orders the service by an electronic
17 means that simultaneously activates that service.

18 SECTION 10. 100.207 (3m) of the statutes is created to read:

19 100.207 (3m) PROHIBITED ACTIONS. A telecommunications provider may not do
20 any of the following:

21 (a) Enroll a customer in any telecommunications service in which the customer
22 did not affirmatively request to be enrolled. A customer's request to be enrolled in
23 a particular telecommunications service is an affirmative request to be enrolled only
24 in that particular telecommunications service.

1 (b) Submit, verify, or execute a change in a person's selection of a
2 telecommunications provider unless the person affirmatively requests that the
3 telecommunications provider take such action.

4 SECTION 11. 100.207 (4) (a) of the statutes is amended to read:

5 100.207 (4) (a) A ~~person~~ telecommunications provider may not misrepresent
6 that local exchange service may be disconnected for nonpayment of other
7 telecommunications service.

8 History: 1993 a. 496; 1995 a. 27.

8 SECTION 12. 100.207 (4) (b) of the statutes is amended to read:

9 100.207 (4) (b) A ~~person~~ telecommunications provider may not unreasonably
10 refuse to provide a detailed listing of charges for telecommunications service upon
11 the request of a customer.

12 History: 1993 a. 496; 1995 a. 27.

12 SECTION 13. 100.207 (6) (a) 1. of the statutes is amended to read:

13 100.207 (6) (a) 1. If a ~~person~~ telecommunications provider fails to comply with
14 this section, any person or class of persons adversely affected by the failure to comply
15 has a claim for appropriate relief, including damages, injunctive or declaratory
16 relief, specific performance and rescission.

17 History: 1993 a. 496; 1995 a. 27.

17 SECTION 14. 100.207 (6) (ar) of the statutes is created to read:

18 100.207 (6) (ar) If a telecommunications provider submits, verifies, or executes
19 a change in a person's selection of a telecommunications provider that the person did
20 not affirmatively request to be made, that person shall not be liable for charges
21 imposed by that unauthorized telecommunications provider for the first 30 days
22 after the unauthorized telecommunications provider submitted, verified, or
23 executed the change.

24 SECTION 15. 100.207 (6) (b) 1. of the statutes is amended to read:

1 100.207 (6) (b) 1. The department of justice, after consulting with the
 2 department of agriculture, trade and consumer protection, or any district attorney
 3 upon informing the department of agriculture, trade and consumer protection, may
 4 commence an action in circuit court in the name of the state to restrain by temporary
 5 or permanent injunction any violation of this section. Injunctive relief may include
 6 an order directing telecommunications providers, ~~as defined in s. 196.01 (8p)~~, to
 7 discontinue telecommunications service provided to a ~~person~~ any other
 8 telecommunications provider violating this section or ch. 196. Temporary injunctive
 9 relief may include an order requiring that a telecommunications provider deposit in
 10 an escrow account any payments that the provider has received or is expected to
 11 receive from customers as a result of practices that may violate this section or ch. 196. ✓
 12 Before entry of final judgment, the court may make such orders or judgments as may
 13 be necessary to restore to any person any pecuniary loss suffered because of the acts
 14 or practices involved in the action if proof of these acts or practices is submitted to
 15 the satisfaction of the court.

History: 1993 a. 496; 1995 a. 27.

16 **SECTION 16.** 100.207 (6) (c) of the statutes is amended to read:

17 100.207 (6) (c) Any ~~person~~ telecommunications provider who violates subs. (2)
 18 to (4) shall be required to forfeit not less than \$25 nor more than \$5,000 \$10,000 for
 19 each offense. Each day that a telecommunications provider provides
 20 telecommunications services to a person who did not affirmatively request those
 21 services or to a person who was billed for telecommunications services in violation
 22 of sub. (3), constitutes a separate offense. Forfeitures under this paragraph shall be
 23 enforced by the department of justice, after consulting with the department of

1 agriculture, trade and consumer protection, or, upon informing the department, by
2 the district attorney of the county where the violation occurs.

History: 1993 a. 496; 1995 a. 27.

3 **SECTION 17.** 100.207 (6) (cm) of the statutes is created to read:

4 100.207 (6) (cm) 1. A telecommunications provider that submits, verifies, or
5 executes a change in a person's selection of a telecommunications provider that the
6 person did not affirmatively request to be made shall pay the person's authorized
7 telecommunications provider an amount equal to 150% of all charges that the person
8 paid to the unauthorized telecommunications provider.

9 2. If a person makes a payment to an unauthorized telecommunications
10 provider and the unauthorized telecommunications provider forwards that payment
11 to the person's authorized telecommunications provider, the authorized
12 telecommunications provider shall refund or provide a credit to the person in the
13 amount of 50% of the payment made by the person to the unauthorized
14 telecommunications provider.

15 3. An unauthorized telecommunications provider shall refund or provide a
16 credit to a person for any charges incurred by that person to restore service by his
17 or her authorized telecommunications provider.

18 **SECTION 18.** 100.207 (6) (e) of the statutes is renumbered 100.207 (6) (e) 1. and
19 amended to read:

20 100.207 (6) (e) 1. Subject to par. (em), the department shall promulgate rules
21 under this section. The rules shall include procedures that a telecommunications
22 provider shall use to submit, verify, or execute a change on behalf of a customer who
23 has requested such a change in telecommunications services and shall be consistent

1 with 47 USC 258 and regulations established under that section, except as provided
2 in subd. 2.

History: 1993 a. 496; 1995 a. 27.

3 **SECTION 19.** 100.207 (6) (e) 2. of the statutes is created to read:

4 100.207 (6) (e) 2. If a commercial mobile radio service provider is required by
5 the federal communications commission to provide equal access to common carriers
6 of the provision of telephone toll services under 47 USC 332 (c), the department shall
7 exempt that commercial mobile radio service provider from the verification
8 procedures specified in the rules promulgated under subd. 1.

9 **SECTION 20. Initial applicability.**

10 (1) This act first applies to changes in telecommunications services made on the
11 effective date of this subsection.

12

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2638/P1dn

RNK:.....

WJ

I have prepared this draft in preliminary form to give you an opportunity to review the draft and to make any changes you feel are necessary. Please review the draft very carefully to ensure that it meets your intent. I have discussed certain of the underlying issues with John Stolzenberg of the legislative council and Dave Ghilardi from DATCP. You may wish to have them review the draft as well. Please note the following:

1. Under current law, s. 100.264 (2) provides that a person who violates s. 100.207 is subject to a supplemental forfeiture if the conduct for which the violation was imposed was perpetrated against an elderly or disabled person. Under this draft this supplemental forfeiture will also apply to telecommunications providers who engage in prohibited actions under proposed s. 100.207 (3m). Is this O.K.?
2. Under current law, s. 100.207 (6) (em) requires that DATCP form an advisory group to suggest recommendations regarding the content and scope of any proposed rule. Under this draft, the rules required to be promulgated by DATCP will also be subject to this requirement. Is this consistent with your intent?
3. I have amended current law, in s. 100.207, so that the prohibitions in that statute apply to "telecommunications providers" rather than to "persons". I have made this change for purposes of consistency. This change is not intended to be substantive.

If you have any questions concerning this draft, please feel free to contact me.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2638/P1dn
RNK:wlj:kjf

September 21, 2001

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1. Under current law, s. 100.264 (2) provides that a person who violates s. 100.207 is subject to a supplemental forfeiture if the conduct for which the violation was imposed was perpetrated against an elderly or disabled person. Under this draft this supplemental forfeiture will also apply to telecommunications providers who engage in prohibited actions under proposed s. 100.207 (3m). Is this O.K.?
2. Under current law, s. 100.207 (6) (em) requires that DATCP form an advisory group to suggest recommendations regarding the content and scope of any proposed rule. Under this draft, the rules required to be promulgated by DATCP will also be subject to this requirement. Is this consistent with your intent?
3. I have amended current law, in s. 100.207, so that the prohibitions in that statute apply to "telecommunications providers" rather than to "persons." I have made this change for purposes of consistency. This change is not intended to be substantive.

If you have any questions concerning this draft, please feel free to contact me.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Per David Ghilardi -

~~Wants~~

doesn't want to change the term "person" to "telecommunications provider" because he is concerned that this could be viewed as a substantive change. Instead, OK to refer to a "person who provides telecommunications service". Also want to repeat the definition of "telecommunications" service in ch. 100 rather than use a X-ref.

Called Katie & left message - also, sent e-mail to ask if she wants me to redraft

FCC delegation authority 47 USC Sec. 155 (c)

Questions -

looks like FCC can delegate authority to a
commission under 47 USC Sec 155 (c)
why not have DATCP be designated commission?
but what about "intrastate" enforcement?
and if DATCP is the designated ~~state~~ commission, how
are its orders to be enforced?
who is the DATCP attorney - can I call them
is there a battle between DATCP + PSC?
who is handling these disputes currently?

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2638/lins.
RNK.....

Current law prohibits telecommunications providers from engaging in certain trade practices. That law prohibits a person from making a representation with regard to the provision of telecommunications services that is false, misleading or deceptive. Current law also prohibits a person from engaging in negative option billing or negative enrollment of telecommunications services. Additionally, under current law, a person may not charge a customer for telecommunications services provided after the customer has cancelled those services. The law also requires that if a person who orders telecommunications services as the result of an oral solicitation, the provider of the services must provide independent confirmation of the order.

This bill imposes additional requirements on telecommunications providers. The bill prohibits a person from enrolling a customer in any telecommunications service in which the customer did not affirmatively request to be enrolled. The bill specifies that a request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular service. It also prohibits a person from making a change in a person's selection of a provider of telecommunications services unless the person affirmatively requests that such a change be made.

The bill imposes certain additional penalties against telecommunications providers that engage in unauthorized actions and provides certain remedies to customers and to telecommunications providers who are injured by these unauthorized actions. Under the bill, if a provider of telecommunications services makes an unauthorized change in a person's service that the person did ^{not} affirmatively request, the person is not liable for any charges imposed by the unauthorized provider for the first 30 days after the change was made. The bill also requires a provider that makes an unauthorized change to pay the customer's authorized provider an amount equal to 150% of the charges paid by the customer to the unauthorized provider. The bill provides that if a customer makes a payment to an unauthorized provider and that unauthorized provider forwards the payment to the customer's authorized provider, the authorized provider must refund or provide a credit to the customer in the amount of 50% of that payment. Finally, an unauthorized provider must refund or provide a credit to a customer for any charges incurred by that person to restore service by his or her authorized provider.

The bill requires the department of agriculture, trade and consumer protection to promulgate rules that include procedures that a person must use to make a change on behalf of a customer who requests a change in telecommunication services and requires the rule to be consistent with federal law regulating such changes.

The bill provides that a person may request a telecommunications service orally, in writing, or by electronic means but specifies that a telecommunications provider may not provide services to a person who order the service by an electronic means that simultaneously activates the service.

Kite, Robin

From: Ghilardi, David J DATCP
Sent: Thursday, October 18, 2001 4:52 PM
To: Kite, Robin
Subject: LRB-2638 (Wis. Stats. s. 100.207)

I have been thinking about our discussion concerning the use of "person" in the draft. I have realized that if you define a "telecommunications provider" as a "person who provides telecommunications services or an authorized person who acts on behalf...." and you also define "telecommunications service" by repeating the language in s. 196.01(9m) instead of referencing it, then this should work. In turn, the rest of the drafting should be less of a nightmare.

Sorry it took me so long to figure this out and I hope it works. Please give me a call if you have any questions. Also, Jon Stolzenberg has called me to discuss the draft.

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

Order excerpts
+
Appdx A - Test
of rules
(starting on p. 8197)

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers)
Long Distance Carriers)

CC Docket No. 94-129

FIRST ORDER ON RECONSIDERATION

Adopted: April 13, 2000

Released: May 3, 2000

By the Commission: Commissioner Furchtgott-Roth approving in part, dissenting in part, and issuing a statement; Commissioner Powell issuing a statement.

I. INTRODUCTION

1. In our Second Report and Order and Further Notice of Proposed Rulemaking (*Section 258 Order*),¹ we adopted rules to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).² The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. In the *Section 258 Order*, we adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. We also adopted liability rules designed to take the profit out of slamming. In this First Order on Reconsideration (*Order*), we amend certain of our liability rules, granting in part petitions for reconsideration of our *Section 258 Order*. Specifically, the revised rules provide for slamming disputes between consumers and carriers to be brought before appropriate state commissions, or this Commission in cases where the state has not opted to administer our rules, rather than to authorized carriers. In light of this decision, we deny a petition filed by several long distance carriers seeking waiver

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom, Inc. v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*).

² 47 U.S.C. § 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

FCC Record Vol. 15, No. 13, 8158

May 1 - May 12, 2000

of the slamming liability rules and proposing an industry-sponsored slamming liability administrator.³ In this order, we also modify the liability rules that apply when a consumer has paid charges to a slamming carrier. In such instances, our new rules require slamming carriers to pay out 150% of the collected charges to the authorized carrier, which, in turn, will pay to the consumer 50% of his or her original payment. Finally, the order sets forth certain notification requirements to facilitate carriers' compliance with the liability rules. We believe these modifications will strengthen the ability of our rules to deter slamming, while addressing concerns raised with respect to our previous administrative procedures.

II. BACKGROUND

2. In the *Section 258 Order*, we strengthened the procedures by which carriers must obtain customer verification of preferred carrier change requests. We broadened the scope of these verification procedures to apply to changes to local as well as long distance carriers. Additionally, the *Section 258 Order* set forth rules governing preferred carrier freezes, which prohibit carriers from changing a consumer's preferred carrier without that consumer's express authorization to "lift the freeze."

3. Recognizing that our previous rules had failed to deter carriers from engaging in slamming, we also adopted more aggressive new rules to take the profit out of slamming by absolving subscribers of liability for some slamming charges. These new liability rules were designed to ensure that carriers cannot profit from slamming activities, as well as to compensate subscribers for the inconvenience and confusion experienced due to slamming. The new rules absolve a subscriber of liability for all calls made within the first 30 days after being slammed. Under these rules, any charges for calls made beyond the 30-day limit must be paid by the subscriber to the authorized carrier at the authorized carrier's rates. If the subscriber has paid his or her bill to the unauthorized carrier, however, section 258(b) requires the unauthorized carrier to remit this payment to the authorized carrier. Upon receipt of this amount, the rules adopted in the *Section 258 Order* require the authorized carrier to provide the subscriber with a refund or credit of any amount the subscriber paid in excess of the authorized carrier's rates. The rules adopted in the *Section 258 Order* also require the authorized carrier to conduct investigations to provide an alleged unauthorized carrier with the opportunity to prove that it did not slam the customer.⁴

4. Although the majority of our new slamming rules took effect on April 27, 1999, the new liability rules were stayed by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) at the request of MCI WorldCom, Inc.⁵ These liability rules were, however, at the core of the Commission's renewed efforts to eliminate slamming by giving consumers meaningful redress and by preventing carriers from profiting from this practice.

³ Joint Petition for Waiver filed by AT&T Corp., MCI WorldCom, Inc., Sprint Corp., Competitive Telecommunications Assn., Telecommunications Resellers Assn., Excel Telecommunications, Inc., Qwest Communications Corp., and Frontier Corp. (March 30, 1999) (Joint Waiver Petition).

⁴ *Section 258 Order*, 14 FCC Rcd at 1521, ¶ 18; 1529, ¶ 34; 1531, ¶ 38; 1533-35, ¶¶ 42-45.

⁵ *MCI WorldCom, Inc. v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999).

Indeed, we saw a decline in slamming complaints during the period immediately prior to the May 1999 stay of these rules that may well have been attributable to carriers' recognition that the new liability rules would make it costly to continue slamming. In May 1999, the Common Carrier Bureau's Enforcement Division received only 840 slamming complaints, a sharp decrease from the 1,355 slamming complaints it received in April 1999.⁶ Local telephone companies have reported similar declines in the number of complaints they have received. For example, SBC's records show that in May 1999 it received 15,271 slamming complaints, compared to 23,484 slamming complaints received in April 1999.⁷ Similarly, Bell Atlantic's records reveal that in May 1999 it received 15,951 slamming complaints, down from the 19,263 slamming complaints it received in April 1999 and the 35,556 slamming complaints it received in March 1999.⁸

5. Twelve entities filed petitions for reconsideration and/or clarification of the rules adopted in the *Section 258 Order*,⁹ and many parties filed comments in response to the petitions. Although the petitions raise a broad range of issues relating to the slamming rules, this *Order* addresses only those issues relating to the liability rules stayed by the D.C. Circuit. We will address the remaining reconsideration and clarification issues in a subsequent order.

6. In this *Order* we reaffirm our decision to provide limited absolution of charges to consumers who are slammed. However, we modify the liability rules that apply when a consumer has paid charges to a slamming carrier. In addition, we grant, in part, several of the petitions requesting that we modify the obligations and procedures set forth in the *Section 258 Order* for administering these liability rules. These modifications are intended to resolve concerns raised in this proceeding and in the petitions for stay filed both with this Commission and with the D.C. Circuit.¹⁰ In support of certain issues in their petitions for reconsideration,

⁶ Slamming Complaint Trends, Common Carrier Bureau, Enforcement Division, Consumer Protection Branch (September 1999).

⁷ Letter from Chris Jines, SBC, to Glenn Reynolds, FCC, dated October 22, 1999, at Attachment A (SBC Carrier Dispute Activity).

⁸ Letter from Marie Breslin, Bell Atlantic, to Glenn Reynolds, FCC, dated October 25, 1999.

⁹ The petitions filed are: AT&T Corp. Petition for Partial Reconsideration or, in the Alternative, for Clarification (AT&T Petition); Excel Telecommunications, Inc. Petition for Clarification and Reconsideration (Excel Petition); Frontier Corp. Petition for Reconsideration (Frontier Petition); GTE Service Corp. Petition for Reconsideration (GTE Petition); MediaOne Group Petition for Reconsideration (MediaOne Petition); National Association of State Utility Consumer Advocates Petition for Reconsideration of the Second Report and Order (NASUCA Petition); National Telephone Cooperative Association Petition for Reconsideration (NTCA Petition); New York State Consumer Protection Board Petition for Reconsideration (NYSCP Board Petition); RCN Telecom Services, Inc. Petition for Clarification and Reconsideration (RCN Petition); Rural LECs Petition for Reconsideration (Rural LECs Petition); SBC Communications, Inc. Petition for Reconsideration and for Clarification (SBC Petition); Sprint Corp. Petition for Reconsideration (Sprint Petition).

¹⁰ Joint Parties' Motion for Extension of the Effective Date of the Rules or, in the Alternative, for a Stay filed by AT&T Corp., MCI WorldCom, Inc., Sprint Corp., Competitive Telecommunications Assn., Telecommunications Resellers Assn., Excel Telecommunications, Inc., Qwest Communications Corp., and Frontier Corp. (March 29, 1999); Motion for Stay Pending Judicial Review or, in the Alternative, for Expedited Consideration and Consolidated Response to the FCC's Motion to Hold in Abeyance filed by MCI WorldCom, Inc. (D.C. Cir. May 10, 1999) (MCI WorldCom Motion for Stay).

several petitioners make arguments that are the same as or substantially similar to those we previously addressed in the *Section 258 Order*. Most of these petitioners do not offer new information to persuade us that our decisions on these issues in the *Section 258 Order* were erroneous. After reaffirming the importance of absolution to consumer protection, therefore, we address, with respect to the liability rules, only those new arguments raised in the petitions for reconsideration that we have not already considered and rejected.¹¹ In this *Order* we also deny the Waiver Petition because we conclude that it is not in the public interest.

III. DISCUSSION

A. Absolution

1. Retaining Limited Absolution

7. We restate our conviction that the limited absolution of consumer charges ordered by our slamming rules is essential to deterring slamming. By depriving unauthorized carriers of slamming revenues in the first instance, absolution takes the profit out of this illegal practice. Several petitioners and commenters, including all of the groups representing consumer and state interests, agree that absolution is "a reasonable and practical extension of the statutory intent reflected in section 258 that the slamming carrier not be allowed to keep any of its ill-gotten gains."¹² The only commenters who oppose absolution are carriers that would be subject to the more stringent liability created by these rules.¹³

8. As detailed in the *Section 258 Order*, we concluded that more aggressive slamming liability rules are essential because our previous rules had failed to stem the growth of slamming.¹⁴ As we summarized in that order:

... our experience in this area leads us to the inescapable conclusion that slamming has become a profitable business for many carriers. For this reason, the rules we adopt in this *Order* not only seek to strengthen the existing verification rules, but are more broadly designed to prevent carriers from making any profits when they slam consumers ... the strongest incentive for such carriers to implement strictly our verification rules is to know that failure to

¹¹ See 47 C.F.R. § 1.429(b).

¹² SBC Response to Petitions for Reconsideration at 3. See also NASUCA Petition at 4; NTCA Opposition to Petitions for Reconsideration at 6; NYSCPB Petition at 6.

¹³ See, e.g., AT&T Petition; Frontier Petition; Sprint Petition; Cable & Wireless Comments; Qwest Reply Comments; MCI Comments.

¹⁴ *Section 258 Order*, 14 FCC Rcd at 1518-20, ¶¶ 13-16. In 1995, the Commission processed fewer than 9,000 slamming complaints. In 1996, the Commission processed fewer than 13,000 slamming complaints. In 1997 and 1998, the number of processed slamming complaints jumped to over 20,000 each year. Consumer Protection Branch, Enforcement Division, Common Carrier Bureau, Consumer Complaint Statistics (October 1999).

C. Administration of the Slamming Liability Rules

1. Overview.

22. We find that the record supports modifications to the administrative processes set forth in the *Section 258 Order*. As discussed below, the modified rules we adopt in this *Order* provide that disputes between alleged slamming carriers, authorized carriers, and subscribers now will be brought before an appropriate state commission, or this Commission in cases where the state has not elected to administer these rules, rather than to the authorized carriers, as adopted in the *Section 258 Order*.⁵⁵ We make this change to ensure that the slamming dispute is brought before a neutral entity, as well as to remove administrative burdens from the authorized carrier. We also provide authorized carriers the option of either re-rating customer overcharges or using a 50% proxy for excess overcharges. The rule adopted in the *Section 258 Order* required the authorized carrier to provide actual re-rating in every instance to determine the amount of charges to be collected from a subscriber for calls made outside the 30-day absolution window.⁵⁶ We have revised this rule in response to contentions from the carriers that requiring the authorized carrier to re-rate the charges imposed by another carrier is time-consuming and expensive.⁵⁷ We also recognize that similar industry concerns were raised in the MCI Motion for Stay.⁵⁸ Accordingly, these modifications are intended, in part, to address some of the issues that may have been considered by the D.C. Circuit in granting the stay.⁵⁹

2. Forum for Administration of Slamming Liability Rules.

23. In the *Section 258 Order*, we set forth rules that imposed on authorized carriers certain responsibilities for resolving disputes between subscribers and allegedly unauthorized carriers. Recognizing that other alternatives might better serve consumer interests under our slamming liability scheme, however, we agreed to entertain requests for waiver of our rules if carriers implemented an independent third party administrator to discharge carrier obligations for resolving slamming disputes. We specified that such a proposal should give consumers a single point of contact to resolve slamming problems and provide consumers with a neutral forum for resolving disputes regarding slamming liability.⁶⁰ On March 30, 1999, a coalition of

rating, we agree that the fifty-percent proxy proposed by the Joint Parties provides simplicity which may prove beneficial to consumers.”); Comments of SBC on Joint Waiver Petition at 3 (50% proxy approach “is a good, practical solution to what could be a very sticky problem.”)

⁵⁵ *Section 258 Order*, 14 FCC Rcd at 1533-34, ¶ 42.

⁵⁶ *Id.* at 1524, ¶ 23.

⁵⁷ *See, e.g.*, Frontier Petition at 18.

⁵⁸ MCI Worldcom, Inc. Motion for Stay at 7-8, 15-17.

⁵⁹ The *Stay Order* did not provide the D.C. Circuit’s analysis beyond stating that the requirements for a stay had been satisfied.

⁶⁰ *Section 258 Order*, 14 FCC Rcd at 1542, ¶ 55.

interexchange carriers filed a Waiver Petition proposing a plan for an industry-funded third party to administer our slamming liability rules.⁶¹ On April 20, 1999, state commissions, through the National Association of Regulatory Utilities Commissions (NARUC), filed a letter asserting that they are well-equipped to handle slamming complaints and requesting that the Commission consider allowing them to be the primary adjudicators of slamming disputes.⁶² NARUC argues that the state commissions are more appropriate than the industry's proposed third-party administrator to execute our slamming liability provisions because the states have existing, neutral, and comprehensive mechanisms to handle slamming disputes.⁶³

24. We conclude that it is in the public interest to have state commissions,⁶⁴ rather than a third party designated by carriers, perform the *primary* administrative functions of our slamming liability rules. In fact, it appears to be both appropriate and effective to establish this type of alliance with the states. The language of Section 258 itself contemplates a state and federal partnership to deter slamming.⁶⁵ In addition, the states and the Commission have been working together for some time to share information and develop new and creative solutions to combat slamming. For example, the State and National Action Plan (SNAP), comprising staff from NARUC, the FCC, and the National Regulatory Research Institute, regularly meet to develop joint public information strategies to increase awareness of telecommunications issues affecting consumers, coordinate enforcement actions to protect consumers against abuses in the telecommunications marketplace, and coordinate regulatory initiatives.⁶⁶ Joint state-federal activities have been very effective in protecting consumers against various types of telecommunications fraud. It is imperative that the states and the FCC continue to cooperate, and expand their interaction, in order to eradicate slamming.

25. We also find that the state commissions are, for several reasons, more appropriate for resolving slamming disputes than the administrator proposed by the long distance carriers. We agree with NARUC that the states are particularly well-equipped to handle complaints

⁶¹ See generally, Joint Waiver Petition.

⁶² Letter from Bob Rowe, Chairman, NARUC Telecommunications Committee, to William Kennard, Chairman, Federal Communications Commission, dated April 20, 1999 (NARUC April 1999 Letter); see also, Letter to William E. Kennard, Chairman of the FCC, from Bob Rowe, NARUC First Vice President and Chairman, Telecommunications Committee, and Bill Gillis, NARUC Chairman, Consumer Affairs Committee, dated Sept. 1, 1999, at 2 (NARUC September 1999 Letter).

⁶³ NARUC September 1999 Letter.

⁶⁴ In most states, slamming disputes are resolved by the state public utility commission. We note, however, that some states may designate an entity other than the state public utility commission to resolve its slamming complaints. Accordingly, references to "state commissions" in this order, and in the rules adopted herein, shall include all entities that each individual state chooses to designate to resolve its residents' slamming complaints. See Appendix A, 47 C.F.R. § 64.1170(a).

⁶⁵ See 47 U.S.C. § 258 (stating that "nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services").

⁶⁶ See Report of State and National Action Plan Activities to the National Association of Regulatory Utility Commissioners at 1-2 (July 1999).

because they are close to the consumers and familiar with carrier trends in their region. As NARUC describes, establishing the state commissions as the primary administrators of slamming liability issues will ensure that "consumers have realistic access to the full panoply of relief options available under both state and federal law. . . ." ⁶⁷ Moreover, state commissions have extensive experience in handling and resolving consumer complaints against carriers, particularly those involving slamming. In fact, the General Accounting Office (GAO) has reported that all state commissions have procedures in place for handling slamming complaints, and that those procedures have been effective in resolving such complaints. ⁶⁸ We specifically note that at present more than 35 states have committed to provide the resources necessary to resolve slamming disputes in a timely and fair manner. ⁶⁹

26. Based upon these representations and the proven track record of customer satisfaction, we conclude that state commissions have the ability and desire to provide prompt and appropriate resolution of slamming disputes between consumers and carriers in a manner consistent with the rules adopted by this Commission. In most situations, state commissions will be able to provide consumers with a single point of contact for each state, thereby enabling slammed consumers to rectify their situations, receive refunds, and get appropriate relief with one phone call. State commissions also will be able to provide consumers and carriers with timely processing of slamming disputes. Finally, but of critical importance, states will provide a neutral forum for the resolution of slamming disputes. As noted above, this was one of the essential criteria we set forth for the approval of a slamming liability administrator. We do not conclude here that an industry-sponsored administrator could not act as a "neutral" adjudicator of disputes between carriers and consumers. Nonetheless, we are troubled by the concerns raised by several consumer groups that such an entity would be perceived by consumers as biased in favor of carriers. The slamming liability rules are intended to protect consumers, and the effectiveness of any administrative mechanism we select will be dependent upon consumers having confidence in the fairness and impartiality of the process. We agree with the arguments of NARUC that state commissions will be perceived by consumers as more "neutral" adjudicators of disputes than the third-party administrator proposed by the interexchange carriers. ⁷⁰

27. We recognize, however, that not all states have the resources to resolve these slamming complaints, or may choose not to take on this primary responsibility. Consumers in these states accordingly may seek resolution of their slamming disputes by filing a complaint with this Commission. To provide consumers who opt to file complaints with this Commission

⁶⁷ *Id.*

⁶⁸ GAO Report on Telecommunications, State and Federal Actions to Curb Slamming and Cramming at 8 (July 1999).

⁶⁹ See Letter to William E. Kennard, Chairman of the FCC, from Bob Rowe, NARUC President, Joan Smith, NARUC Chair, Telecommunications Committee, and Bill Gillis, NARUC Chairman, Consumer Affairs Committee, dated April 6, 2000 (NARUC April 2000 Letter).

⁷⁰ See NARUC April 1999 Letter.

the full complement of rights and remedies contemplated by this order,⁷¹ we are amending our own rules for the adjudication of slamming complaints.⁷²

28. Our conclusion that states should have primary responsibility for administering our slamming liability rules shall not preclude a consumer from electing to file a slamming complaint with this Commission. In cases where the state has indicated it will administer our rules, however, this Commission will refer informal complaints to the appropriate state commission for resolution, unless the complainant expressly indicates it wishes to have the matter resolved by this Commission. This Commission will not adjudicate a complaint based on an allegation of slamming while the complainant has a complaint arising from the same set of facts pending before a state commission that has opted to administer our slamming rules. Additionally, these rules do not preclude the filing of a petition for declaratory ruling alleging that a state has improperly implemented our verification or liability rules.⁷³ Finally, nothing in these procedures is intended to abrogate any party's right to pursue relief for a slamming violation in state or federal court.

3. Administrative Procedures.

a. State Notification of Participation in Adjudication of Complaints.

29. To ensure full and seamless administration of complaints among this Commission and the states, each state commission that chooses to take on the primary responsibility for resolving consumer slamming complaints must notify this Commission of the procedures it will use to adjudicate individual slamming complaints on the effective date of these revised rules.⁷⁴ Each state commission's notification should explain how consumers may file complaints (including where the complaint is to be filed, what if any filing fees a consumer must pay, and what documentation a consumer must provide in its complaint), any and all deadlines parties must adhere to that are shorter than those explicitly stated in these rules, what safeguards exist to

⁷¹ See discussion *infra*. at ¶¶ 31-43.

⁷² Currently, slamming complaints filed with this Commission are adjudicated under the FCC's informal complaint rules, see 47 C.F.R. §§ 1.716-1718. The informal complaint rules do not provide for the FCC to order monetary payments by carriers against a slammed consumer. While a consumer could proceed under the formal complaint rules, see 47 C.F.R. § 1.720, such a process may not be cost-effective for many consumers. To maximize consumer protection in this particular area, we are amending our informal complaint rules for the adjudication of slamming actions. See Appendix A, 47 C.F.R. § 1.719. This new manner of adjudication resembles the existing informal complaint rules, but gives the consumer a wider array of remedies. We also amend the function statement of the Consumer Information Bureau to expressly accommodate the the new informal complaint rules. See Appendix A, 47 C.F.R. § 0.141(b)(1)(C).

⁷³ See discussion *infra*. At ¶ 37.

⁷⁴ See Appendix A, 47 C.F.R. § 64.1110. States which file such notification are referred to as "participating states"; states that do not file such notification are referred to as "non-participating states." We note that the rules we modify in this Order have been stayed by the Court. See *MCI Worldcom v. FCC*, No. 99-1125 (D.C. Cir., May 18, 1999). Accordingly, we will publish a notification in the Federal Register of the effective date of the rules adopted herein to ensure that the states have sufficient notice to comply with this filing deadline.

ensure procedural fairness to consumers and carriers, and what rights parties have to appeal an initial decision.⁷⁵

30. If, after the effective date of these rules, additional states opt to administer complaints under the rules, they may do so by filing such notification in the above-captioned docket and sending a copy to the Chief of the FCC Consumer Information Bureau.⁷⁶ In addition, state notification of an intention to discontinue administering complaints under the rules shall be filed in the above-captioned docket, with a copy of such notification provided to the Chief of the FCC Consumer Information Bureau.⁷⁷

b. Preliminary Consumer Relief is Granted upon Slamming Allegation.

31. We retain the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of services from a subscriber's bill upon the subscriber's allegation that he or she was slammed.⁷⁸ Several carriers state that the allegation of a slam should not trigger preliminary relief because many slamming complaints will turn out to be invalid or fraudulent.⁷⁹ As we explained in the *Section 258 Order*, the fact that a subscriber can only be absolved of liability if he or she has in fact been slammed minimizes our concerns about fraud by consumers.⁸⁰ In accordance with the revised rules described above, if a carrier is able to produce proof of verification, it is entitled to receive full payment from the subscriber for all services provided. Our rules will motivate carriers to comply strictly with our verification procedures to protect themselves from inappropriate claims of slamming. We also explained in the *Section 258 Order* that the absolution remedy we adopted provides an easily administered remedy for consumers who have been slammed. The absolution remedy would not be as effective if the consumer had to pay for slamming charges in the first instance; we have emphasized repeatedly how essential it is to minimize the opportunity for unauthorized carriers to physically take control of slamming profits for any period of time.⁸¹ Accordingly, our rules will continue to require that, upon an allegation of a slam, the alleged unauthorized carrier must remove all charges assessed for the first 30 days of service immediately from the subscriber's bill.

32. Our retention of the requirement that an alleged unauthorized carrier must remove all charges assessed for the first 30 days of service from a subscriber's bill upon the subscriber's allegation that he or she was slammed, along with our modification of the administration procedures, creates the need for an additional administrative rule. Specifically, because the

⁷⁵ See Appendix A, 47 C.F.R. § 64.1110(a).

⁷⁶ *Id.*

⁷⁷ See Appendix A, 47 C.F.R. § 64.1110(b).

⁷⁸ *Section 258 Order*, 14 FCC Rcd at 1533, ¶ 42.

⁷⁹ See, e.g., Frontier Petition at 14-15, 16; TRA Comments to Petitions for Reconsideration at 5; Cable & Wireless Comments to Petitions for Reconsideration at 8; Qwest Comments to Petitions for Reconsideration at 2.

⁸⁰ *Section 258 Order*, 14 FCC Rcd at 1523, ¶ 22.

⁸¹ *Id.* at 1521, ¶ 19.

provide that state commissions (or the FCC) will resolve slamming disputes, thereby alleviating any neutrality concerns. Based on the states' representations discussed above, we find that the majority of states have the resources and knowledge to provide prompt and effective resolution of slamming disputes. For these reasons, the public interest favors adoption of the revised rules, which utilize appropriate state commissions as reliable, timely, and neutral dispute-resolution forums, rather than the proposed industry-sponsored third-party administrator.

IV. CONCLUSION

51. In this *Order*, we grant in part and deny in part petitions for reconsideration or clarification of the slamming liability rules adopted in the *Section 258 Order*. We emphasize that eliminating the profitability of slamming by absolving consumers of certain charges incurred after being slammed is essential to eliminating slamming itself. Absolution deprives unscrupulous carriers of access to slamming revenues, thereby preventing them from profiting from slamming activities. Absolution provides appropriate incentives for consumers to examine their telephone bills carefully, as well as motivating carriers to comply strictly with our verification procedures. Finally, absolution provides necessary compensation to consumers who experience confusion, frustration, and wasted time as a result of being slammed. Our experience to date convinces us that adoption of rules absolving consumers from paying these charges is the most effective way to significantly reduce the ever-growing number of slamming incidents.

52. We also revise our rules to place primary responsibility for resolving slamming disputes on state commissions. We find that state commissions have the resources and the necessary experience to give slammed consumers a single point of contact, a neutral forum for dispute resolution, and timely relief. Where state commissions choose not to take on this primary responsibility, we revise our rules to provide consumers in such states the full complement of rights and remedies contemplated by this order.¹³⁴ We also deny the Waiver Petition filed by certain interexchange carriers because it is not in the public interest to grant the waiver. Finally, we make nonsubstantive modifications to our rules to reorder these rules where necessary and otherwise simplify these rules.¹³⁵

League Letter to FCC, CC Docket 94-129, dated July 30, 1999 (any FCC-approved third party administrator must include voting representation by consumer organizations); NARUC Comments to Waiver Petition at 4-5; Ohio PUC Comments to Waiver Petition at 7-8; California PUC Reply Comments to Waiver Petition at 10; Consumer Federation of America Comments to Waiver Petition at 5 (stating concern at the lack of information on costs); NASUCA Comments to Waiver Petition at 1; California PUC Reply Comments to Waiver Petition at 3, 6; State Attorneys General Comments to Waiver Petition at 2; Ohio PUC Comments to Waiver Petition at 5; NARUC Comments to Waiver Petition at 1-2 (stating that the proposal may restrict consumer remedies).

¹³⁴ See Appendix A, 47 C.F.R. § 1.719.

¹³⁵ See Appendix A.

APPENDIX A
RULES AMENDED

Part 0 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. Part 0, Subpart A, is amended by adding paragraph (b)(1)(iii) to read as follows:

(b) * * *

(1) * * *

(i) * * *

(iii) Resolve certain classes of informal complaints, as specified by the Commission, through findings of fact and issuance of orders.

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. Part 64, Subpart K, is amended by redesignating section 64.1160 as section 64.1130.

← Not included

2. Part 64, Subpart K, if further amended by modifying section 64.1100 to read as follows:

§ 64.1100 Definitions

(a) The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and 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.

(b) The term *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.

(c) The term *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 part.

- (d) The term *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 part.
- (e) The term *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 part.
- (f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents arising out of an allegation that an unauthorized change of a telecommunication service provider has occurred that has elected, in accordance with the requirements of § 64.1110(a) of this part, to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in §§ 64-1100-1190.
- (g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal Communications Commission, and the complaint is not forwarded to a state commission.

3. Part 64, Subpart K, is further amended by adding sections 64.1110 to read as follows:

§ 64.1110 State Notification of Election to Administer FCC Rules.

- (a) *Initial Notification.* State notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 99-129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.
- (b) *Withdrawal of Notification.* State notification of an intention to discontinue administering the Federal Communication Commission's unauthorized carrier change rules and remedies, as enumerated in §§ 64.1100-1190, shall be filed with the Commission Secretary in CC Docket No. 99-129 with a copy of such amended notification provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

4. Part 64, Subpart K, is further amended by adding sections 64.1120 to read as follows:

§ 64.1120 Verification of Orders for Telecommunications Service.

(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 part. 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:

(i) Authorization from the subscriber, and

(ii) Verification of that authorization in accordance with the procedures prescribed in this section. 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 described in this part 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 part 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 part.

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

(1) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1130; or

- (2) 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 in paragraph (1) of this subsection. 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 number identification; or
- (3) 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 not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and 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
- (4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

5. Part 64, Subpart K, is further amended by adding sections 64.1140 to read as follows:

§ 64.1140 Carrier Liability for Slamming.

(a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170 of this part. The remedies provided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

- (1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber 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. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the

Remedies to be included in state program

subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e) of this part.

- (2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of § 64.1170(c) of this part.
- (3) If the subscriber has been absolved of liability as prescribed by this section, 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.

6. Part 64, Subpart K, is further amended by revising section 64.1150 to read as follows:

§ 64.1150 Procedures For Resolution of Unauthorized Changes in Preferred Carrier

- (a) *Notification of Alleged Unauthorized Carrier Change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.
- (b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint.
- (c) *Notification of Receipt of Complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier removes all unpaid charges from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, if it has not already done so.
- (d) *Proof of Verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§ 64.1150-1160 of this part. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e) of this part, has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.
- (e) *Election of Forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720-736, involving an alleged unauthorized change,

as defined by § 64.1100(e) of this part, while a complaint based on the same set of facts is pending with a state commission.

7. Part 64, Subpart K, is further amended by adding section 64.1160 to read as follows:

§ 64.1160 Absolution Procedures Where the Subscriber Has Not Paid Charges

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e) of this part, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e) of this part, occurred. An allegedly unauthorized carrier choosing to challenge such allegation *shall* immediately notify the complaining subscriber that: (1) the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110 of this part, or the FCC within 30 days of either (i) the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or (ii) the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and (2) a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber's will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1) of this part. No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

- (1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in § 64.1100(e), not occurred; or
- (2) The amount of the charge may be determined using a 50 % Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.
- (f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1160 of this part shall apply to those payments.
- (g) If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

8. Part 64, Subpart K, is further amended by revising section 64.1170 to read as follows:

§ 64.1170 Reimbursement Procedures Where the Subscriber Has Paid Charges

- (a) The procedures in this subsection shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.
- (b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:
 - (1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and
 - (2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber.

This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

- (c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid

by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber.

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

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also 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.

(f) 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 the subscriber's participation in that 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 section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

9. Part 64, Subpart K, is further amended by revising section 64.1180 to read as follows:

§ 64.1180 [Reserved]

RULES ADDED

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

1. Part 1, Subpart E, is amended by adding section 1.719 to read as follows:

§ 1.719 Informal Complaints Filed Pursuant to Section 258

(a) Notwithstanding the requirements of §§ 1.716-1.718, the following procedures shall apply to complaints alleging that a carrier has violated section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e).

(b) *Form.* The complaint shall be in writing, and should contain: (1) the complainant's name, address, telephone number and e-mail address (if the complainant has one); (2) the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d), and

authorized carrier, as defined by § 64.1100(c); (3) a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; (4) a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and (5) the specific relief sought.

(c) *Procedure.* The Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100-1190. The Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160-70.

(d) *Unsatisfied Informal Complaints Involving Unauthorized Changes of a Subscriber's Preferred Carrier; Formal Complaints Relating Back to the Filing Dates of Informal Complaints.* If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721 of this part. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (b) of this section and provided that: the formal complaint (1) is filed within 45 days from the date an order resolving the informal complaint filed under this section is mailed or delivered electronically to the complainant; (2) makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and (3) is based on the same cause of action as the informal complaint filed under this section. If no formal complaint is filed within the 45-day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.