

Mary,

Here are the federal materials relating
for Jauch/Richard
to the 5.100.207 amendment draft that

we discussed. ^{After} On looking at some pollution

laws, I'm not sure SATCP needs to be

^{by statute} told to seek the delegation from FCC; rule

making based on federal regulations appear

adequate.

John

§ 256. Coordination for interconnectivity

(a) Purpose

It is the purpose of this section—

(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through—

(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

(b) Commission functions

In carrying out the purposes of this section, the Commission—

(1) shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service; and

(2) may participate, in a manner consistent with its authority and practice prior to February 8, 1996, in the development by appropriate industry standards-setting organizations of public telecommunications network interconnectivity standards that promote access to—

(A) public telecommunications networks used to provide telecommunications service;

(B) network capabilities and services by individuals with disabilities; and

(C) information services by subscribers of rural telephone companies.

(c) Commission's authority

Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.

(d) Definition

As used in this section, the term "public telecommunications network interconnectivity" means the ability of two or more public telecommunications networks used to provide telecommunications service to communicate and exchange information without degeneration, and to interact in concert with one another.

(Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 76.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts, House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

LIBRARY REFERENCES

Texts and Treatises

Business and Commercial Litigation in Federal Courts § 62.5 (Robert L. Haig ed.) (West Group & ABA 1998).

§ 257. Market entry barriers proceeding

(a) Elimination of barriers

Within 15 months after February 8, 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating by regulations unnecessary to its authority

under this chapter (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National policy

In carrying out subsection (a) of this section, the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) Periodic review

Every 3 years following the completion of the proceeding required by subsection (a) of this section, the Commission shall review and report to Congress on—

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) of this section and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) of this section that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

(Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 77.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts, House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

References in Text

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Act

June 19, 1934, c. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 258. Illegal changes in subscriber carrier selections

(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.

(b) Liability for charges

Any telecommunications carrier that violates the verification procedures described in subsection (a) of this section and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

(Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 77.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts, House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

§ 259. Infrastructure sharing

(a) Regulations required

The Commission shall prescribe, within one year after February 8, 1996, regulations that require incumbent local exchange carriers (as defined in section 251(h) of this title)

[Code of Federal Regulations]

[Title 47, Volume 3, Parts 40 to 69]

[Revised as of October 1, 2000]

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47 USC 258

[Page 245-252]

TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION--(CONTINUED)

PART 64--MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart K--Changing Long Distance Service

Sec. 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 Sec. 64.1110(a), to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in Secs. 64.1100 through 64.1190.

(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.

[65 FR 47690, Aug. 3, 2000]

Sec. 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 Secs. 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 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

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Communication Commission's unauthorized carrier change rules and remedies, as enumerated in Secs. 64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94-129 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.

[65 FR 47691, Aug. 3, 2000]

Effective Date Note: At 65 FR 47691, Aug. 3, 2000, Sec. 64.1110 was added, effective Sept. 5, 2000. Paragraphs (a) and (b) contain information collection requirements and will not become effective until approval by the Office of Management and Budget.

Sec. 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 **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:

(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 Sec. 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 (a)(1) 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 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

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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.

[65 FR 47691, Aug. 3, 2000]

Sec. 64.1130 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 part.

(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 [insert the name of the 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

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promotional materials, oral descriptions or instructions provided with the letter of agency.

[64 FR 7760, Feb. 16, 1999. Redesignated at 65 FR 47692, Aug. 3, 2000]

Sec. 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 Sec. 64.1170. 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 subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of Sec. 64.1160(e).

(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 Sec. 64.1170(c).

(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.

[65 FR 47691, Aug. 3, 2000]

Effective Date Note: At 65 FR 47691, Aug. 3, 2000, Sec. 64.1140 was added, effective Sept. 5, 2000. Paragraphs (a) and (b) contain information collection requirements and will not become effective until approval by the Office of Management and Budget.

Sec. 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 remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by Sec. 64.1100(e), 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

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change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in Secs. 64.1150 through 64.1160. The relevant governmental agency will determine whether an unauthorized change, as defined by Sec. 64.1100(e), 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 Sec. 1.719 or Secs. 1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by Sec. 64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

[65 FR 47692, Aug. 3, 2000]

Effective Date Note: At 65 FR 47692, Aug. 3, 2000, Sec. 64.1150 was added, effective Sept. 5, 2000. Paragraphs (a) through (d) contain information collection requirements and will not become effective until approval by the Office of Management and Budget.

Sec. 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 Sec. 64.1100(c), 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 Sec. 64.1100(e), 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 Sec. 64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to Sec. 64.1110, or the FCC within 30 days of either; the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and 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 Sec. 64.1140(b)(1). 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 Sec. 64.1100(e), 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 Sec. 64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as

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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 Sec. 64.1170 shall apply to those payments. 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.

[65 FR 47692, Aug. 3, 2000]

Effective Date Note: At 65 FR 47692, Aug. 3, 2000, Sec. 64.1160 was added, effective Sept. 5, 2000. Paragraphs (b) through (f) contain information collection requirements and will not become effective until approval by the Office of Management and Budget.

Sec. 64.1170 Reimbursement procedures where the subscriber has paid charges.

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by Sec. 64.1100(e), 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 Sec. 64.1100(e), 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

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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.

[65 FR 47693, Aug. 3, 2000]

Effective Date Note: At 65 FR 47693, Aug. 3, 2000, Sec. 64.1170 was added, effective Sept. 5, 2000. Paragraphs (b) through (f) contain information collection requirements and will not become effective until approval by the Office of Management and Budget.

Sec. 64.1180 [Reserved]

Sec. 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:

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

(ii) 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 Secs. 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

(iii) 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:

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

(ii) 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 Secs. 64.1190(d)(3)(ii)(A) through (D). 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

(iii) 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 Sec. 64.1190(d)(3)(ii)(A) through (D). The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests 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

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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.

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

(ii) 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:

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

(B) 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;

(C) 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

(D) 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.

[64 FR 7762, Feb. 16, 1999]

Pat Wood, III
Chairman

Judy Walsh
Commissioner

Brett A. Perlman
Commissioner

W. Lane Lanford
Executive Director



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by Texas

Public Utility Commission of Texas DOCKET FILE COPY ORIGINAL

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September 8, 2000

SEP 13 2000

RE: CC Docket No. 94-129

Magalie Roman Salas
FCC Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

FCC MAIL ROOM

Dear Ms. Salas:

Pursuant to the procedures established in the FCC's *First Order On Reconsideration* in CC Docket No. 94-129 released May 3, 2000, the Public Utility Commission of Texas (PUCT) is electing to take primary responsibility for resolving Texas consumers' slamming complaints as of the effective date of the FCC's modified unauthorized carrier change rules. The information required to be included in the state notification by 47 C.F.R. § 64.1110(a) and ¶ 29 of the May Order is provided below:

PUCT Complaint Process

Method of Filing: Consumers may contact the PUCT regarding their slamming complaints by letter, fax, online electronic complaint form or telephone call to the commission.

Location of Filing:

Mailing address:

Public Utility Commission of Texas
Customer Protection Division
PO Box 13326
Austin, TX 78711-3326

Toll-free consumer complaints phone number:

[1-888-782-8477]

Fax phone number:

[512-936-7003]

Internet Online complaint form:

[<http://www.puc.state.tx.us>]

Filing Fees:

None

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List ABCDE

Documentation Consumer Must Provide: Staff will request a copy of the page of the consumer's telephone bill that contains the alleged unauthorized carrier's charges and a document containing the consumer's legal signature (usually a copy of a driver's license). An investigator will

Michelle Walters - consumer protection rule making
common carrier

Margaret Eglar
consumer info bureau - does slamming
enforcement

Minnesota - AG's office

Brad Ramey - General Counsel - NARUC
202 898-2207

FCC thinks only they have interstate slamming
authority

Patricia Dolese (512) 936-7000
director of enforcement - Texas
active in slamming

FCC web site

"search for filed comments"

"proceedings" inter 94-129

Per Richards:

delayed eff. date - ~~9~~ 9 months

no advisory committee for these rules

(soon)

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

administration and enforcement of the federal communications commission unauthorized carrier change rules and remedies, and requiring the exercise of rule-making authority

regenerate catalog

1 AN ACT to renumber and amend 100.207 (1) and 100.207 (6) (e); to amend
2 100.207 (2), 100.207 (3) (a), 100.207 (3) (b), 100.207 (3) (c), 100.207 (4) (a),
3 100.207 (4) (b), 100.207 (6) (a) 1., 100.207 (6) (b) 1. and 100.207 (6) (c); and to
4 create 100.207 (1) (a), 100.207 (1) (b), 100.207 (1) (d), 100.207 (3) (d), 100.207
5 (3m), 100.207 (6) (ar), 100.207 (6) (cm) and 100.207 (6) (e) 2. of the statutes;
6 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.~~

Insert Anal. →

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

7 SECTION 1. 100.207 (1) of the statutes is renumbered 100.207 (1) (intro.) and
8 amended to read:
9 100.207 (1) (intro.) DEFINITION DEFINITIONS. In this section,
10 "telecommunications service":

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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

Insert Anal.

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the ^{telecommunications} services must provide independent confirmation of the order.

This 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 orders the service by ~~an~~ ^{any} electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. 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. The bill also prohibits the practice known as "slamming". A person engages in slamming by making a change in a customer's selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

^{rules} In addition to the slamming prohibitions created under this bill, ^{rules} federal law also ~~prohibits~~ slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under ~~regulations~~ ^{regulations} promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC ~~regulations~~ ^{regulations} prohibiting slamming including the remedies and penalties specified under those ~~regulations~~ ^{regulations}. This bill directs the department of agriculture, trade and consumer protection to notify the FCC of its intention to administer the

(DATCP)



FCC ~~regulations~~ ^{rules}. It also requires DATCP to promulgate rules that are consistent with the FCC ~~regulations~~.

FE-5

INSERT 3-6

Now A customer's request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular telecommunications service.

INSERT 5-1

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

100.207 (6) (a) 1. If a person fails to comply with ~~this section~~ ^X subs. (2) to (4), any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance, and rescission.

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

INSERT 7-6

SECTION 2. 100.207 (6) (em) 1. of the statutes is amended to read:

100.207 (6) (em) 1. Before preparing any proposed rule under ~~this section~~ ^X par. (e), the department shall form an advisory group to suggest recommendations

regarding the content and scope of the proposed rule. The advisory group shall consist of one or more persons who may be affected by the proposed rule, a representative from the department of justice, and a representative from the public service commission.

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

SECTION 3. 100.207 (6) (g) of the statutes is created to read:

100.207 (6) (g) Nothing in this subsection precludes the department from seeking a remedy or penalty in accordance with the rules promulgated under sub. (7). Practices in violation of sub. (3) may also constitute a violation of the rules promulgated under sub. (7).

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

100.207 (7) ADMINISTRATION OF FEDERAL COMMUNICATIONS COMMISSION RULES.

The department shall administer and enforce the federal communications commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110 to 64.1190 and shall notify the federal communications commission of its intention to administer and enforce those rules and remedies. In addition to the rules promulgated under sub. (6) (e), the department shall promulgate rules that are consistent with the commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110 to 64.1190

in accordance with 47 CFR 64.1110(a),

INSERT 7-9

SECTION 5. Effective date.

(1) This act takes effect on the first day of the 10th month beginning after publication.

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

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

3 100.207 (1) (a) "Commercial mobile radio service provider" has the meaning
4 given in s. 196.01 (2g).

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

6 100.207 (1) (b) "Telecommunications ^{service} provider" means a telecommunications
7 provider as defined in s. 196.01 (8p) or an authorized person who acts on behalf of
8 or at the direction of a telecommunications ^{service} provider.

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

10 100.207 (1) (d) "Unauthorized telecommunications ^{service} provider" means a
11 telecommunications ^{service} provider that submits, verifies, or executes a change in a
12 person's selection of a telecommunications ^{service} provider that the person did not
13 affirmatively request to be made.

14 SECTION 5. 100.207 (2) of the statutes is amended to read:

15 100.207 (2) ADVERTISING AND SALES REPRESENTATIONS. A person
16 telecommunications ^{service} provider may not make in any manner any statement or
17 representation with regard to the provision of telecommunications service, including
18 the rates, terms, or conditions for telecommunications service, which is false,
19 misleading, or deceptive, or which omits to state material information with respect
20 to the provision of telecommunications service that is necessary to make the
21 ~~statement not false, misleading, or deceptive.~~

22 SECTION 6. 100.207 (3) (a) of the statutes is amended to read:

23 100.207 (3) (a) A person ^{plain} telecommunications provider may not engage in
24 negative option billing or negative enrollment of telecommunications services,
25 including unbundled telecommunications services. A person ^{plain} telecommunications

, or enroll a customer in,

1 ~~provider~~ may not bill a customer for any telecommunications service that the
2 customer did not affirmatively order unless that service is required to be provided
3 by law, the federal communications commission, or the public service commission.
4 A customer's failure to refuse a ~~person's telecommunications provider's~~ ^{plan} proposal to
5 provide a telecommunications service is not an affirmative request for that
6 telecommunications service. Insert 3-6

7 ~~SECTION 7. 100.207 (3) (b) of the statutes is amended to read:~~
8 ~~100.207 (3) (b) A person telecommunications ^{service} provider may not charge a~~
9 ~~customer for telecommunications service provided after the customer has canceled~~
10 ~~that telecommunications service.~~

11 ~~SECTION 8. 100.207 (3) (c) of the statutes is amended to read:~~
12 ~~100.207 (3) (c) A person telecommunications ^{service} provider shall provide a customer~~
13 ~~who has ordered a telecommunications service through an oral solicitation with~~
14 ~~independent confirmation of the order within a reasonable time.~~

15 ~~SECTION 9. 100.207 ^(3m) ~~(3) (d)~~ of the statutes is created to read:~~
16 ~~100.207 ^(3m) ~~(3) (d)~~ A customer may affirmatively request a telecommunications~~
17 ~~service orally, in writing, or by electronic means.~~

18 ~~(b) Notwithstanding ^{par: (a)} ~~sub (b)~~, a telecommunications provider ^{person} may not provide~~
19 ~~a telecommunications service to a ^{customer} ~~person~~ who orders the service by an electronic~~
20 ~~means that simultaneously activates that service.~~

21 ~~SECTION 10. 100.207 ^{(3)(d)} ~~(3) (d)~~ of the statutes is created to read:~~
22 ~~100.207 ^{(3)(d)} ~~(3) (d)~~ PROHIBITED ACTIONS. A telecommunications provider ^{person} may not ~~do~~~~
23 ~~any of the following:~~

24 ~~(a) Enroll a customer in any telecommunications service in which the customer~~
25 ~~did not affirmatively request to be enrolled. A customer's request to be enrolled in~~

1 ~~a particular telecommunications service is an affirmative request to be enrolled only~~
 2 ~~in that particular telecommunications service.~~
 3 ~~no of~~ ~~submit, verify, or execute~~ ^{make} a change in a ~~person's~~ ^{customer's} selection of a
 4 telecommunications ^{service} provider unless the ~~person~~ ^{customer} affirmatively requests that the
 5 ~~telecommunications provider~~ ^{person} take such action.

6 SECTION 11. 100.207 (4) (a) of the statutes is amended to read:
 7 100.207 (4) (a) A ~~person~~ ^{service} telecommunications provider may not misrepresent
 8 that local exchange service may be disconnected for nonpayment of other
 9 telecommunications service.

10 SECTION 12. 100.207 (4) (b) of the statutes is amended to read:
 11 100.207 (4) (b) A ~~person~~ ^{service} telecommunications provider may not unreasonably
 12 refuse to provide a detailed listing of charges for telecommunications service upon
 13 the request of a customer.

14 SECTION 13. 100.207 (6) (a) 1. of the statutes is amended to read:
 15 100.207 (6) (a) 1. If a ~~person~~ ^{service} telecommunications provider fails to comply with
 16 this section, any person or class of persons adversely affected by the failure to comply
 17 has a claim for appropriate relief, including damages, injunctive or declaratory
 18 relief, specific performance, and rescission.

19 SECTION 14. 100.207 (6) (ar) of the statutes is created to read:
 20 100.207 (6) (ar) If a ^{person who provides} telecommunications ~~provider~~ ^{services} submits, verifies, or executes
 21 a change in a person's selection of a telecommunications ^{service} provider that the person did
 22 not affirmatively request to be made, that person shall not be liable for charges
 23 imposed by that unauthorized telecommunications ^{service} provider for the first 30 days
 24 after the unauthorized telecommunications ^{service} provider submitted, verified, or
 25 executed the change.

Insert
5-1 →

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

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

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

100.207 (6) (c) Any ^{plain} ~~person/telecommunications provider~~ who violates subs. (2) to (4) shall be required to forfeit not less than \$25 nor more than \$5,000 ~~\$10,000~~ for each offense. Each day ~~that a telecommunications provider provides telecommunications services to a person who did not affirmatively request those services or to a person who was billed for telecommunications services~~ ^{ob} ~~in violation of sub. (3)~~ constitutes a separate offense. Forfeitures under this paragraph shall be 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.

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

4 100.207 (6) (cm) 1. A telecommunications^{service} 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 ^{service} 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
24 with 47 USC 258 and regulations established under that section, except as provided
25 in subd. 2. ^{service}

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

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

Insert
7-6 →

7 **SECTION 20. Initial applicability.**

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

Insert
7-9 →

10 (END)

Barman, Mike

From: Barman, Mike
Sent: Friday, December 07, 2001 3:04 PM
To: Rep.Richards
Subject: 01-2638/1 (attached - requested by Dan)



01-2638/1

Kite, Robin

From: Lorentz, Daniel
Sent: Monday, January 28, 2002 1:54 PM
To: Kite, Robin
Cc: Stolzenberg, John
Subject: LRB 2638

Importance: High

Robin--

In reading over LRB 2638 (the slam and cram proposal), John Stolzenberg of Leg. Council had this question:

Why, on page 3, line 11...on page 4, line 7...does the draft no longer refer to "this section" as on page 3, line 20 and instead limit it to subs. (2) to (4)?

By referring just to subs. 2-4, the draft doesn't (does it?) pick up the federal enforcement capabilities under sub. 7.

Rep. Richards would like to allow DATCP maximum flexibility in ability to enforce these provisions. Wouldn't including a reference to the whole section (including sub 7) be the best way to do that?

I may have mangled John's question, so if it doesn't make sense you can call him...But I'd like to know what you think, too.

Also: Rep. Richards wants to introduce this bill ASAP (of course). We'll let you know sometime Wednesday (when you're back), what, if any, additional drafting instructions we have.

Thanks.

Dan Lorentz
Rep. Richard's Office
60650

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2638/2dn
RNK: *AM*

Date

As requested, this redraft clarifies that the remedies and penalties under s. 100.207 (6) apply to any violation of s. 100.207, including a violation of the rules promulgated under proposed s. 100.207 (7). Please note that for purposes of consistency, this draft also amends s. 100.207 (5) to broaden the scope of that provision so that it also applies to all of s. 100.207.

Please feel free to contact me if you have any questions concerning this draft.

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



Wanted Thurs. 1-31-02
State of Wisconsin
2001 - 2002 LEGISLATURE

JMR
12
LRB-26384
RNK:wlj&hnh:kjf
hnh

D-Note
2001 BILL

Regenerate

1 AN ACT *to amend* 100.207 (3) (a), 100.207 (6) (a) 1., 100.207 (6) (b) 1., 100.207
2 (6) (c) and 100.207 (6) (em) 1.; and *to create* 100.207 (3) (d), 100.207 (3m),
3 100.207 (6) (g) and 100.207 (7) of the statutes; **relating to:** prohibited actions
4 by telecommunications providers, administration and enforcement of the
5 federal communications commission unauthorized carrier charge rules and
6 remedies, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the telecommunications services must provide independent confirmation of the order.

This 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 orders the service by any electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. The bill prohibits a person from enrolling a customer

BILL

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. The bill also prohibits the practice known as "slamming." A person engages in slamming by making a change in a customer's selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

In addition to the slamming prohibitions created under this bill, federal law also prohibits slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under rules promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC rules prohibiting slamming including the remedies and penalties specified under those rules. This bill directs the department of agriculture, trade and consumer protection (DATCP) to notify the FCC of its intention to administer the FCC rules. It also requires DATCP to promulgate rules that are consistent with the FCC regulations rules.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 100.207 (3) (a) of the statutes is amended to read:

2 100.207 (3) (a) A person may not engage in negative option billing or negative
3 enrollment of telecommunications services, including unbundled
4 telecommunications services. A person may not bill a customer for, or enroll a
5 customer in, any telecommunications service that the customer did not affirmatively
6 order unless that service is required to be provided by law, the federal
7 communications commission, or the public service commission. A customer's failure
8 to refuse a person's proposal to provide a telecommunications service is not an
9 affirmative request for that telecommunications service. A customer's request to be
10 enrolled in a particular telecommunications service is an affirmative request to be
11 enrolled only in that particular telecommunications service.

12 **SECTION 2.** 100.207 (3) (d) of the statutes is created to read:

BILL

1 100.207 (3) (d) A person may not make a change in a customer's selection of a
2 telecommunications service provider unless the customer affirmatively requests
3 that the person take such action.

4 **SECTION 3.** 100.207 (3m) of the statutes is created to read:

5 100.207 (3m) REQUESTS FOR SERVICE. (a) A customer may affirmatively request
6 a telecommunications service orally, in writing, or by electronic means.

7 (b) Notwithstanding par. (a), a person may not provide a telecommunications
8 service to a customer who orders the service by an electronic means that
9 simultaneously activates that service.

10 ~~**SECTION 4.** 100.207 (6) (a) 1. of the statutes is amended to read:~~

11 ~~100.207 (6) (a) 1. If a person fails to comply with this section subs. (2) to (4),~~
12 ~~any person or class of persons adversely affected by the failure to comply has a claim~~
13 ~~for appropriate relief, including damages, injunctive or declaratory relief, specific~~
14 ~~performance, and rescission.~~

15 **SECTION 5.** 100.207 (6) (b) 1. of the statutes is amended to read:

16 100.207 (6) (b) 1. The department of justice, after consulting with the
17 department of agriculture, trade and consumer protection, or any district attorney
18 upon informing the department of agriculture, trade and consumer protection, may
19 commence an action in circuit court in the name of the state to restrain by temporary
20 or permanent injunction any violation of this section. Injunctive relief may include
21 an order directing telecommunications providers, as defined in s. 196.01 (8p), to
22 discontinue telecommunications service provided to a person violating this section
23 or ch. 196. Temporary injunctive relief may include an order requiring that a person
24 who provides telecommunications services deposit in an escrow account any
25 payments that the provider has received or is expected to receive from customers as

Insert
3-14 →

BILL

1 a result of practices that may violate this section or ch. 196. Before entry of final
2 judgment, the court may make such orders or judgments as may be necessary to
3 restore to any person any pecuniary loss suffered because of the acts or practices
4 involved in the action if proof of these acts or practices is submitted to the satisfaction
5 of the court.

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

7 100.207 (6) (c) Any person who violates ~~subs. (2) to (4)~~ ^{this section} shall be required to
8 forfeit not less than \$25 nor more than \$5,000 \$10,000 for each offense. Each day of
9 violation constitutes a separate offense. Forfeitures under this paragraph shall be
10 enforced by the department of justice, after consulting with the department of
11 agriculture, trade and consumer protection, or, upon informing the department, by
12 the district attorney of the county where the violation occurs.

13 **SECTION 7.** 100.207 (6) (em) 1. of the statutes is amended to read:

14 100.207 (6) (em) 1. Before preparing any proposed rule under ~~this section~~ par.
15 (e), the department shall form an advisory group to suggest recommendations
16 regarding the content and scope of the proposed rule. The advisory group shall
17 consist of one or more persons who may be affected by the proposed rule, a
18 representative from the department of justice, and a representative from the public
19 service commission.

20 **SECTION 8.** 100.207 (6) (g) of the statutes is created to read:

21 100.207 (6) (g) Nothing in this subsection precludes the department from
22 seeking a remedy or penalty in accordance with the rules promulgated under sub.
23 (7). Practices in violation of sub. (3) may also constitute a violation of the rules
24 promulgated under sub. (7).

25 **SECTION 9.** 100.207 (7) of the statutes is created to read:

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2638/2ins.
RNK:.....

X Insert 3-14

SECTION 1. 100.207 (5) of the statutes is amended to read:

100.207 (5) TERRITORIAL APPLICATION. ~~Subsections (2) to (4) apply~~ This subsection applies to any practice directed to any person in this state.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2638/2dn
RNK:hmb:jf

January 30, 2002

As requested, this redraft clarifies that the remedies and penalties under s. 100.207 (6) apply to any violation of s. 100.207, including a violation of the rules promulgated under proposed s. 100.207 (7). Please note that for purposes of consistency, this draft also amends s. 100.207 (5) to broaden the scope of that provision so that it also applies to all of s. 100.207.

Please feel free to contact me if you have any questions concerning this draft.

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

Emery, Lynn

From: Emery, Lynn
Sent: Thursday, January 31, 2002 2:21 PM
To: Lorentz, Daniel
Subject: LRB-2638/2 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 30, 2002

MEMORANDUM

To: Representative Richards

From: Robin N. Kite, Legislative Attorney

Re: LRB-2638/2 Unfair trade practices in telecommunications

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7291 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266 3561 if you have any questions regarding this memorandum.