

5. REIMBURSEMENT PROCESS AND VERIFICATION

5.1 Defendant shall reimburse all eligible Tennessee consumers. Tennessee consumers who are eligible for reimbursement are those consumers who have had their long distance service switched through Defendant and:

- (a) Have requested reimbursement from Defendant in the past on the basis that a switch to a new long distance carrier conducted by Defendant was unauthorized or was based upon misrepresentations to the consumer, but excepting those consumers who have previously been reimbursed by Defendant in accordance with the reimbursement process set forth herein;
- (b) Have notified in the past the State (including but not limited to the Attorney General's Office, the Division of Consumer Affairs and the Public Service Commission), their local exchange carriers or Defendant that a switch to a new long distance carrier conducted by Defendant was unauthorized or was based upon misrepresentations to the consumer, but excepting those consumers who have previously been reimbursed by Defendant in accordance with the reimbursement process set forth herein; or
- (c) Make a written request for such reimbursement either directly to Defendant, through the Division of Consumer Affairs, the Public Service Commission, the Attorney General's Office, other state entity or to the consumer's local exchange carrier within one hundred twenty (120) days from the date of mailing Exhibit A. (The complaint must be postmarked or received by the appropriate party within the one hundred twenty (120) day period.) Those consumers who wish to submit telephone bills for re-rating will have an additional sixty (60) days after submission of the reimbursement form to submit those bills. Defendant shall have no obligation to make said reimbursement until and unless the written request is given to the Defendant.

5.2 The amount of an eligible consumer's reimbursement shall be determined by computing:

- (a) The cost of all service charges associated with "switching" the consumer initially to MaxCom and then back to their pre-selected long distance carrier, if paid by the consumer (The burden of proving that a consumer did not pay a switching fee is on Defendant); and

- (b) The difference between the rates applied to all long distance calls placed by the consumer while switched by the Defendant and the rates the consumer would have paid if their long distance service had remained with their pre-selected long distance carrier, including any discount plan. This reimbursement is conditioned, however, upon the consumer providing Defendant with a copy of the relevant telephone bills showing the charges to be "re-rated".

5.3 Reimbursement shall be accomplished by applying credit in the normal course of business to the consumer's local telephone bill in the amount derived from the computation outlined in ¶ 5.2, or at Defendant's option, by check. In the event a consumer no longer maintains telephone service, reimbursement shall be accomplished by paying the consumer with a check.

5.4 Defendant shall retain an independent certified public accountant to implement and verify the reimbursement process. The certified public accountant shall be located within the State of Tennessee and the selection of the certified public accountant shall be subject to the reasonable approval of the Attorney General.

5.5 Defendant shall provide to the State, contemporaneously with the entry of this Order, a list of the one thousand eight hundred and seventy-four (1,874) customers of Defendant in Tennessee. The list shall include each customer's name, address and telephone number.

5.6 Defendant, within ten (10) days of entry of this Order, shall mail by first class United States mail, a copy of the letter and reimbursement form attached to this Order as Exhibit A to each of the 1,874 Tennesseans who had their service switched to MaxCom through the sweepstakes promotion. The certified public account will verify that the mailing was actually made. After the mailing of Exhibit A has been completed, the certified public accountant's office will open and review reimbursement forms returned for credit. The reimbursements shall be computed by the certified public accountant.

5.7 Defendant, through the certified public accountant, shall provide to each eligible consumer who returns the reimbursement form credit in the amount that the certified public accountant determines the consumer is entitled to receive for switching fees and any increases in long distance charges they may have incurred while switched. Defendant must provide reimbursement to the consumer within six (6) weeks of receipt of the reimbursement form or the telephone bills submitted for re-rating, and must notify the consumer of the amount of reimbursement through the letter attached as Exhibit B. All reimbursement forms must be postmarked no later than one hundred twenty (120) days from the date of mailing Exhibit A.

5.8 Within two (2) months of execution of this Order and monthly thereafter, until the reimbursement process is completed, the Defendant, through the certified public accountant, shall provide the Attorney General a certified report containing the number of Tennessee consumers who requested reimbursement, each consumer's name and address, the amount of each consumer's reimbursement and the total amount of credit or check provided during the reimbursement period. At the conclusion of the reimbursement process, the Defendant, through the certified public accountant, shall provide a report certifying and verifying that each and every provision of this Order regarding reimbursement has been completed.

5.9 Defendant, through the certified public accountant, shall retain verification of all reimbursements made pursuant to this Order for twelve (12) months after all credits or check have been made to consumers pursuant to paragraphs 5.1 through 5.7. Within one (1) week after request, Defendant shall provide proof to the State that a reimbursement was made by credit or check to a particular consumer, as well as verification that the amount of reimbursement provided was accurate.

5.10 Defendant shall provide the State with unrestricted access to the certified public accountant and any and all documents in the certified public accountant's and Defendant's possession needed to comply with the terms of this Order.

5.11 Defendant is responsible for all costs associated with the reimbursement process set forth in paragraphs 5.1 through 5.11, including, but not limited to, the cost of postage, the costs associated with the certified public accountant, the cost of the letterhead and copying and the cost of envelopes. The letter and checks or credit statements will be mailed in envelopes selected at the sole discretion of the Attorney General and shall be paid for by Defendant. The Attorney General shall be solely responsible for providing Defendant with a sufficient quantity of letterhead and envelopes to comply with this Order. Defendant will not be responsible for meeting any date or time limit for mailing refunds delayed by the failure of the State to provide such letterhead or envelopes. Defendant shall return all unused copies of the Exhibits attached hereto which have been photocopied on Attorney General letterhead and all unused Attorney General envelopes at the conclusion of the reimbursement process.

6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Defendant shall pay the sum of twenty thousand and 00/100 dollars (\$20,000.00) to the State of Tennessee to reimburse the State for attorneys' fees and costs of investigation and prosecution of this matter. This amount shall be paid to the State of Tennessee, by cashiers or certified check, as follows: Four Thousand (\$4,000) Dollars upon execution of this Order; and Four Thousand (\$4,000) Dollars at the first of the next four months thereafter, payable on the first day of each month, and beginning on May 1, 1994.

7. USE OF ATTORNEYS' FEES AND COSTS

7.1 The funds payable pursuant to paragraph 6.1 may be used for consumer protection purposes at the sole discretion of the Attorney General.

8. DEFAULT

8.1 Defendant's failure to make any payment required by this Order shall be deemed an act of default. Upon such default, all remaining amounts are immediately due and owing, and shall be subject to simple interest of one percent (1%) per month. Additionally, Defendant agrees to pay attorneys' fees and costs, including court costs, associated with any collection efforts required to collect the remaining amounts owed the State.

9. REPRESENTATIONS

9.1 IT IS AGREED that the acceptance of this Order by the State shall not be deemed approval by the State of any of Defendant's advertising or other business practices.

9.2 Defendant shall not represent or imply that any advertisement, procedure or other act or practice hereinafter used or engaged in by Defendant has been approved, in whole or in part, by the State.

10. PENALTY FOR FAILURE TO COMPLY

10.1 Defendant understands and acknowledges that pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-180-108(c), any knowing violation of

the terms of this Order is punishable by civil penalties of not more than two thousand and 00/100 dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including contempt sanctions.

11. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

11.1 The parties represent and warrant, each to the other, that the execution and delivery of this Order is their free and voluntary act, that this Order is the result of good faith negotiations, and that the parties believe that the Order and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Order in good faith. Defendant further represents that the signatory for Defendant has the authority to act for and bind Defendant.

11.2 IT IS AGREED that Defendant will make available and disclose the terms of this Order to its employees, officers, directors and any third parties who act on behalf of Defendant, whether as an agent or independent contractor. It is further agreed that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to and bind Defendant, its agents, assigns, representatives, officers, directors, employees, sales staff and successors.

11.3 IT IS AGREED that Defendant will not participate, directly or indirectly, in any activity to form any other entity for the purpose of engaging in acts prohibited by in this Order, or for any other purpose which would otherwise circumvent any part of this Order.

11.4 Execution of this Order shall not constitute a waiver of any private cause of action which any individual could assert against the Defendant in a court of competent jurisdiction.

12. PAYMENT OF COURT COSTS

12.1 Defendant agrees to pay all court costs associated with this action. This Order constitutes the complete agreement of the parties in regard to this Chancery Court action.

13. VENUE

13.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee.

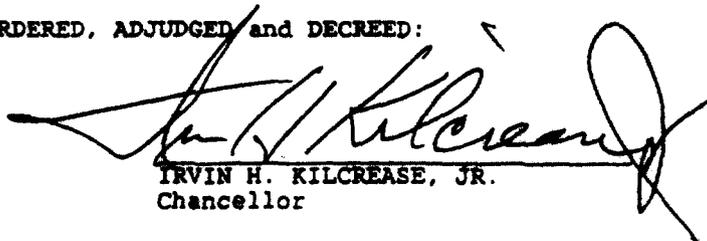
14. COMPLIANCE WITH OTHER LAWS

14.1 IT IS AGREED that nothing in this Order shall be construed as relieving Defendant from complying with any other state or federal law(s), regulation(s) or rule(s), nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

15. MONITORING FOR COMPLIANCE

15.1 Defendant agrees to provide to the State, upon reasonable notice, marketing materials, books, records and other documents as may reasonably be necessary to ensure compliance with the terms of this Order.

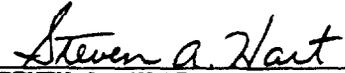
It is so ORDERED, ADJUDGED and DECREED:

  
IRVIN H. KILCREASE, JR.  
Chancellor

APPROVED FOR ENTRY:

FOR PLAINTIFF, STATE OF TENNESSEE:

  
\_\_\_\_\_  
CHARLES W. BURSON  
Attorney General & Reporter  
B.P.R. No. 7775

  
\_\_\_\_\_  
STEVEN A. HART  
Deputy Attorney General  
B.P.R. No. 7050

APPROVAL:

  
\_\_\_\_\_  
ELIZABETH OWEN, Director  
Division of Consumer Affairs

FOR THE DEFENDANT, MAXIMA COMMUNICATIONS CORPORATION:

MAXIMA COMMUNICATIONS CORPORATION

By:   
\_\_\_\_\_  
L. E. SMITH, President  
909 Hodgkins, Suite A  
Houston, TX 77032  
(713)445-0908

TRABUE, STURDIVANT & DEWITT

By:   
\_\_\_\_\_  
ELLEN HOBBS LYLE  
B.P.R. No. 11044

By:   
\_\_\_\_\_  
ROBERT B. LITTLETON  
B.P.R. No. 2816  
25th Floor, Nashville City Center  
511 Union Street  
Nashville, Tennessee 37219-1738  
(615) 244-9270

Attorneys for Defendant

EXHIBIT A

Re: State of Tennessee v. Maxima Communications  
Corporations also known as MaxCom

Dear Consumer:

The Division of Consumer Affairs of the Department of Commerce and Insurance and my Office have entered into a settlement with Maxima Communications Corporation ("MaxCom") of Houston, Texas regarding MaxCom's use of a sweepstakes entry form to switch consumers' long distance carrier. In most cases, consumers whose long distance service was switched to MaxCom will find \_\_\_\_\_ listed on their telephone bill. The settlement provides for the refund of monies only to each consumer whose long distance service was switched by MaxCom without authorization or if MaxCom made any misrepresentation to obtain the authorization. The amount of the reimbursement will consist of (1) the cost of all service charges associated with switching you to MaxCom from your pre-selected long distance carrier and back to your desired carrier, unless reimbursed by that carrier; and (2) any increase in rates on calls made during the term MaxCom was your long distance carrier from the rates offered by your prior carrier. Reimbursement may be made either by a credit on your telephone bill, or, if you no longer maintain telephone service, a payment by check.

If you think that your long distance service was switched without your authorization or due to any misrepresentations by MaxCom, please complete and return the enclosed reimbursement form to: (insert CPA firm address). The reimbursement form must be postmarked no later than \_\_\_\_\_, 1994 in order for you to be eligible to receive reimbursement.

Please carefully review the reimbursement form for additional information. If you have any questions regarding the reimbursement process, please write to the Division of Consumer Affairs, Attn: MaxCom Settlement, 500 James Robertson Parkway, Nashville, TN 37243-0600.

Finally, if your long distance service was switched without your authorization by MaxCom and you have not yet been switched back to your carrier of choice, please contact your local telephone company (e.g., South Central Bell, GTE, Intermountain Telephone) directly and request that you be switched back to your carrier of choice.

Sincerely,

CHARLES W. BURSON  
Attorney General & Reporter

Encl: Reimbursement Form

EXHIBIT B

Re: State of Tennessee v. Maxima Communications Corporation, also known as MaxCom

Dear Consumer:

The Division of Consumer Affairs of the Department of Commerce and Insurance and my Office have entered into a settlement with Maxima Communications Corporation ("MaxCom") of Houston, Texas regarding MaxCom's use of a sweepstakes entry form to switch consumers' long distance carrier. The settlement provides for the refund of monies to consumers who were affected by this company's practices and you were among those consumers who submitted a reimbursement form. Therefore, enclosed please find a refund check (if you no longer maintain telephone service) or a statement showing the amount of credit you will receive on your telephone bill within the next sixty (60) days, which includes (1) the cost of all service charges associated with switching you to MaxCom from your pre-selected long distance carrier and back to your desired carrier, unless reimbursed by that carrier; and (2) if you provided appropriate documentation, any increase in rates on calls made during the term MaxCom was your long distance carrier from the rates offered by your prior carrier.

This Office, as well as the other state agencies, will continue our efforts to protect consumers through enforcement of the consumer statutes of this state.

Sincerely,

CHARLES W. BURSON  
Attorney General & Reporter

Encl: Check or Statement of Credit Amount

MAXIMA COMMUNICATIONS CORPORATION  
REIMBURSEMENT CLAIM FORM



*I am requesting a reimbursement because I assert that MaxCom's switch of my long distance service was unauthorized. I certify that the following information is true to the best of my knowledge, information and belief.*

Please provide the following information to obtain reimbursement from MaxCom either by credit on your local telephone bill, or if you no longer maintain telephone service, by check:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

APT. NO.: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

TELEPHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

TELEPHONE NUMBER(S) SWITCHED BY MAXCOM:  
(\_\_\_\_) \_\_\_\_\_; (\_\_\_\_) \_\_\_\_\_

(Please provide all telephone numbers that were switched by MaxCom for which you are responsible for the telephone bill and for which you paid switching fees so that you may receive a reimbursement for all telephone lines. If you have already switched from MaxCom to another carrier, and that carrier paid or reimbursed you for the switching fee, check here \_\_\_\_.)

**RE-RATING:** Please enclose all telephone bills that you claim should be re-rated. For re-rating, provide the name of your previous carrier \_\_\_\_\_, and any discount calling plans \_\_\_\_\_. If you desire re-rating, but your telephone bills are not currently available, please check here. \_\_\_\_ (Note that they must be provided by \_\_\_\_\_, 1994.)

**IMPORTANT**

**THIS FORM MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_, 1994 TO BE ELIGIBLE FOR REIMBURSEMENT. MAIL THIS COMPLETED FORM TO: ATTN: MAXCOM SETTLEMENT (CPA firm).**

Please note that only persons who were located in Tennessee at the time of the unauthorized switch are eligible under this settlement. Also, only one reimbursement per telephone number allowed.

You should receive your credit or check approximately eight (8) weeks from our receipt of your reimbursement claim form or telephone bills. If you do not receive a credit or check, please write to the Tennessee Division of Consumer Affairs, Attn: MaxCom Settlement, 500 James Robertson Parkway, Fifth Floor, Nashville, TN 37243-6000.

If your long distance service was switched without your authorization by MaxCom and you have not yet been switched back to your carrier of choice, please contact your local telephone company (e.g., South Central Bell, GTE, Intermountain Telephone) directly and request that you be switched back to your carrier of choice. Please note that your credit includes the cost of switching your long distance service initially to MaxCom and back to your previous carrier, unless reimbursed by that carrier. Please check here \_\_\_\_ if your new carrier will pay or reimburse you for your switching fee.



IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

STATE OF TENNESSEE,

Petitioner,

v.

SONIC COMMUNICATIONS, INC.  
a foreign corporation,  
JOHN BUFFA, individually and  
as President of Sonic  
Communications, Inc.,  
JUDY BUFFA, individually and  
as owner of Sonic  
Communications, Inc., and  
MICHAEL BUFFA, individually  
and as Vice-President of  
Sonic Communications, Inc.,

Respondents.

No. 93-3626-TT

93 DEC -9 PM 5:37

PETITION

Charles W. Burson, Attorney General and Reporter for the State of Tennessee, ("Attorney General") files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 ("the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce ("Division") and the Attorney General, acting pursuant to the Act, have investigated the acts and practices of Sonic Communications, Inc., a foreign corporation, John Buffa, Judy Buffa and Michael Buffa ("Respondents"). Upon completion of such investigation, the Division has determined that certain of Respondents' acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices constitute violations of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

2. Based upon their investigation of Respondents, the Division and the Attorney General allege the following:

(a) Respondents are in the business of reselling long distance service to consumers.

(b) Respondents have switched the long distance service of Tennessee consumers without their consent. This practice is commonly referred to as "slamming".

(c) Respondents are not aware how they obtained over eight hundred (800) customers in Tennessee. Respondents allege that a computer error resulted in the unlawful switches of long distance service.

(d) Consumers have complained that their service was switched without their authorization and that they were injured as a result of the illegal switch of their long distance service.

(e) Respondents' conduct constitutes an unfair and deceptive act or practice.

3. Respondents neither admit nor deny the allegations of Paragraph 2(a-e).

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondents and the parties have agreed to, and the

Division has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondents, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

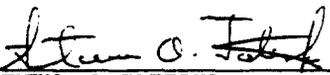
2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Act.

Respectfully submitted,

  
\_\_\_\_\_  
CHARLES W. BURSON  
Attorney General and Reporter  
B.P.R. No. 7775

  
\_\_\_\_\_  
STEVEN A. HART  
Deputy Attorney General  
B.P.R. No. 7050

  
\_\_\_\_\_  
CYNTHIA E. K. CARTER  
Assistant Attorney General  
B.P.R. No. 13533  
Consumer Protection Division  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0491  
(615) 741-3533

  
STEVEN. A TATERKA  
Assistant Attorney General  
B.P.R. No. 15937  
Consumer Protection Division  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0491  
(615) 741-1020

93-36 26-III

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is given by Sonic Communications, Inc., a foreign corporation, John Buffa, individually and as President of Sonic Communications, Inc., Judy Buffa, individually and as owner of Sonic Communications, Inc. and Michael Buffa, individually and as Vice-President of Sonic Communications, Inc. ("Respondents") to Charles W. Burson, Attorney General and Reporter for the State of Tennessee ("Attorney General" or "State") on this 9th day of December, 1993.

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the "Division" or the "State"), in conjunction with the Attorney General, has conducted an investigation of the business practices of Respondents Sonic Communications, Inc., a foreign corporation, John Buffa, individually and as President of Sonic Communications, Inc., Judy Buffa, individually and as owner of Sonic Communications, Inc. and Michael Buffa, individually and as Vice-President of Sonic Communications, Inc. which involve what is commonly termed "slamming" within the telecommunications industry, as more fully described in the accompanying Petition. As a result of the investigation, the Division and the Attorney General are of the opinion that certain acts and practices of the Respondents have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq. ("TCPA").

B. Respondents neither admit nor deny that they have engaged in any conduct in violation of the TCPA.

C. Respondents desire to give this Assurance, and the Attorney General desires to accept it, in order to avoid the costs and expenses of litigation.

#### 1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the person of Respondents for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including the enforcement of compliance therewith and penalties for violation thereof. Respondents agree to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondents.

#### 2. PARTIES

2.1 Respondents warrant and represent that they are the proper parties to this Assurance. Respondents further acknowledge that they understand that the State expressly relies upon this representation and warranty, and that if it is inaccurate, may move to vacate or set aside this Assurance, or may request that Respondents be held in contempt.

2.2 This Assurance shall apply to the Respondents, whether acting through any corporation, subsidiary, affiliate, division or other device, or through any officer, director, employee, agent, successor, assign, or any other person acting in concert or participating with them.

### 3. INJUNCTIVE RELIEF

Accordingly, IT IS HEREBY AGREED by the Respondents that immediately upon the execution of this Assurance they shall be permanently enjoined and bound, as hereinafter set forth, from engaging in the practices set forth herein.

3.1 Respondents shall not engage in any unfair or deceptive acts or practices in the conduct of their business and shall abide by all applicable provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, et seq.

3.2 Respondents shall establish and implement procedures to ensure that all employees signing up consumers for long distance service receive personal approval for the long distance service change from the consumer to whom the telephone number is assigned before switching that consumer's long distance service. The Attorney General shall receive a copy of such procedures established by the Respondents within thirty (30) days of entry of this Assurance.

3.3 Respondents shall abolish any and all incentive payments to any employees based upon the number of consumers signing up to switch long distance service.

3.4 Respondents shall comply with Federal Communications Commission rules and regulations, Tennessee Public Service Commission rules and regulations, and other state or federal laws, regulations or rules relating to "slamming", i.e., switching a consumer's long distance service without prior authorization. Additionally, Respondents acknowledge that the

Tennessee Public Service Commission has proposed rules relating to the practice of slamming and Respondents shall comply with such rules upon promulgation.

3.5 Respondents shall clearly and conspicuously disclose, during any solicitation to switch a consumer's long distance service, that the consumer is being asked to agree to switch their long distance service from their current carrier to that of the Respondents. In addition, any verification mechanism used by Respondents shall also clearly and conspicuously disclose that the consumer is agreeing to switch their long distance service from their current carrier. Such disclosure shall be made prior to the Respondents obtaining verification data and authorizing the switch in the consumer's long distance service.

3.6 Respondents shall not switch a consumer's long distance service without the personal approval of the consumer to whom the telephone number is assigned.

3.7 Respondents shall not state or imply during any solicitation to switch a consumer's long distance service that the consumer's long distance service will remain with the consumer's current long distance carrier and that Respondents will only be billing the service if such is not the case.

3.8 Respondents shall, when switching a consumer from one long distance carrier to another, at a minimum, comply with at least one of the following procedures:

(a) obtain a written Letter of Authorization ("LOA") signed by the customer assigned to the given telephone number. The LOA shall contain:

(i) the telephone number of the customer and the customer's billing name and address;

(ii) each telephone number to be covered by the primary inter-exchange carrier ("PIC") change order;

(iii) a statement that the purpose of the LOA is to switch the consumer's current long distance service to that of the Respondents and that the LOA authorizes Respondents to submit the required authorizations on behalf of the consumer to change the consumer's long distance service to that of the Respondents; and

(iv) notification of the PIC change fee which the customer will incur and acceptance of that fee.

The LOA shall be signed by the employee who solicited the switch of long distance service. In addition, each written LOA will be verified by a separate contact other than the soliciting employee in compliance with paragraphs 3.5 and 3.7. The verifier shall write on the LOA other identifying information (e.g. the customer's date of birth or the customer's mother's maiden name) and sign the LOA. This verification step shall be completed before the PIC change is initiated;

or

(b) in an oral authorization, obtain the customer's authorization via an independent and qualified third party physically located separately from Respondents' representative who has obtained the customer's oral authorization, following a clear and conspicuous disclosure that the customer is being asked to change its PIC. The confirmation shall include an oral authorization to submit the PIC change order that includes verification data (e.g. the customer's date of birth or customer's mother's maiden name) and shall be in compliance with paragraphs 3.5 and 3.7;

or

(c) in response to a consumer initiated contact, within three (3) days of the customer's request for a PIC change, send an information package by first class mail containing the following information:

(i) that the information is being sent to confirm a PIC change order placed by the customer within the previous week;

(ii) the name of the customer's current long distance carrier;

(iii) the name of the newly requested long distance carrier;

(iv) a description of any terms, conditions, or charges that will be incurred;

(v) the name of the person ordering the PIC change;

(vi) the name, address, and telephone number of both the consumer and the soliciting long distance carrier; and

(vii) a postpaid postcard which the customer can use to deny, cancel or confirm the PIC change request.

The consumer will be required to sign the card confirming the change order before the PIC change is made. Respondent shall also comply with paragraph 3.5;

or

(d) obtain the consumer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in (a)(i-iii) to confirm the authorization. This shall be done by using toll-free telephone numbers exclusively for that purpose. Respondents shall comply with paragraphs 3.5 and 3.7.

3.9 Any authorization for a PIC change shall be submitted within fourteen (14) days from the date of obtaining such authorization in order to be valid.

3.10 Respondents shall review any employee's record if Respondents receive two (2) or more complaints or other reliable information indicating that an employee has engaged in an unauthorized PIC change order, made any material misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondents shall promptly discipline employees for such employee misconduct.

3.11 Respondents shall not misrepresent the savings that a consumer will receive if the consumer agrees to a PIC change order.

3.12 Respondents shall not forge the signature of any consumer to a letter of authorization or other document which authorizes a PIC change order.

3.13 Within thirty (30) calendar days of entry of this

Assurance. Respondents shall provide the Attorney General with an acknowledgement that each officer, director and employee (involved in Tennessee operations) of Respondents has received a copy of this Assurance and has acknowledged having read it.

#### 4. RESPONDENTS' STIPULATIONS

4.1 Respondents stipulate that eight hundred and sixty-four (864) consumers within the State of Tennessee were switched to Respondents' long distance service. Respondents further stipulate that sixty-four thousand two hundred eighty-nine and 26/100 dollars (\$64,289.26) in revenues were collected from those Tennessee consumers as of 6-26-93, <sup>J.N.</sup> ~~27~~ 1993. Respondents further understand that the State expressly relies upon these representations and if said representations are false or misleading the State may move to vacate or set aside this Assurance or request that Respondents be held in contempt.

#### 5. RESTITUTION

5.1 Respondents shall provide restitution to the State on behalf of each of the eight hundred and sixty-four (864) consumers whose long distance service was improperly switched to that of the Respondents, to wit, the sum of seventeen thousand two hundred eighty and 00/100 dollars (\$17,280.00) and who return the refund form as required by this Assurance. Such sum shall be placed in an escrow fund to be established for the purpose of making restitution to each eligible consumer that completes and returns the refund form as set forth herein. Any Tennessee consumer that has already received at least a twenty dollar (\$20.00) refund from the Respondents shall not be eligible for a refund under this

Assurance. However, this portion shall not alter any rights a consumer may have pursuant to paragraph 12.4. Attached as Exhibit A is a list of consumers who have already received at least a twenty dollar (\$20.00) refund from the Respondents. The escrow fund while held by the Attorney General's Office shall not be held in an interest bearing account. However, upon transfer of the funds to a certified public accountant the escrow account shall be held in an interest bearing account. Upon selection of a certified public accountant pursuant to paragraph 5.2(a), the State shall provide said funds to the accountant after such accountant provides proof to the State that he/she is bonded for the full amount of funds to be received.

5.2 Respondents shall reimburse all Tennessee consumers whose long distance service was switched by Respondents without their authorization or whose service was switched because of any misrepresentation made to a consumer and who has not previously received a refund of at least twenty dollars (\$20.00) from the Respondents. Respondents shall reimburse each consumer in the following way:

(a) Respondents shall retain an independent certified public accountant to implement and verify the restitution process. The certified public accountant shall be bonded to cover all sums to be placed in escrow with him/her. The certified public accountant shall be located within the state of Tennessee and the selection of the certified public accountant shall be subject to the approval of the Attorney General.

(b) Respondents shall provide to the State, contemporaneously with the entry of this Assurance, a list of

all Tennesseans who are, or have been, Respondents' customers. The list shall include each customer's name, address and telephone number. The list shall be attached as Exhibit B to this Assurance. Exhibit B will not contain the names and addresses of Tennesseans that have already received at least a twenty dollar (\$20.00) refund from the Respondents.

(c) Respondents, by hiring and paying two full-time temporaries selected by the personnel officer of the Attorney General, within ten (10) days of receipt of the mailing labels, shall mail by first class United States mail, a copy of the letter and refund form attached as Exhibit C to each Tennessean identified on Exhibit B. No later than January 3, 1994, Respondents shall provide mailing labels to the Attorney General for each consumer listed in Exhibit B on the day of execution of this Assurance, which shall be used to mail a copy of Exhibit C to each Tennessean set forth in Exhibit B. After the mailing of Exhibit C has been completed, Respondents shall hire and pay a temporary to work in the certified public accountant's office to open and review refund forms returned for reimbursement. The certified public accountant shall be solely responsible for issuing the checks and for preparing all reports required by this Assurance.

(d) Respondents, through the certified public accountant, shall pay each consumer that returns the refund form twenty and 00/100 dollars (\$20.00) which shall reimburse the consumer for switching fees and any increases in long distance charges they may have incurred while switched. All refund forms must be postmarked no later than one hundred twenty (120) days from the date of mailing Exhibit C.

5.3 Refunds shall not consist of credits in any