revenues. However, the authorized carrier may be unwilling to incur the expense of a complaint proceeding, especially if the amounts involved are small.

Sprint believes that the only way to deter slamming by unscrupulous companies engaged in misleading and illegal practices to obtain revenues is for the Commission to seek the criminal prosecution and perhaps imprisonment of the principals of these companies for fraud. Stated differently, the Commission should "slam the slammers." Sprint recognizes that its recommendation here may be extreme. But, intentional slamming is theft. Slamming robs customers of money both in terms of higher rates paid to the slamming carriers and the loss of any premiums. *Id.* at ¶8. It deprives customers of the use of their chosen carriers' calling cards in emergencies or when traveling. *Id.* It costs customers the time they must devote to ensuring that they are returned to their chosen carriers. And, in all cases, it is obviously a cause of great aggravation. *Id.* (citing complaint letters from victims of slamming using such terms as abuse, exploitation and an invasion of privacy to describe the practice of slamming). Ultimately, slamming deprives customers of the main benefit of competition: the right to be served by carriers of their own choosing.

Thus, Sprint recommends that the Commission investigate all slamming complaints it receives against each and every carrier to determine whether such complaints establish a pattern of

deceptive and illegal activities. If so, the Commission should then present its findings to the appropriate Justice Department officials and perhaps the Attorneys General of the various States for possible criminal prosecution.[19]

IV. THE COMMISSION SHOULD FOCUS ON THOSE PROPOSALS WHICH ARE NECESSARY TO IMPLEMENT SECTION 258 OF THE ACT.

As discussed, given the fact that the *Further Notice* provides no analysis based on empirical data as to the root causes of slamming, the Commission should exercise some caution in adopting "anti-slamming" measures beyond those necessary to implement the directives of Section 258. Proposed modifications to the Commission's current rules governing the PC change process that go beyond such directives should not be adopted, until the Commission produces a detailed analysis of the slamming problem on an industry-wide basis and is able to conclude, based on this analysis, that the proposed modifications will be efficacious and cost-effective in addressing the problem of slamming.

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[19]As discussed above, consumers may claim to have been slammed when, in fact, they simply may have second thoughts (*i.e.*, buyer's remorse), and wish to return to their pervious carriers without incurring the charges for switching carriers. Others may disagree with the choice of the person in the household or business who had consented to switch service to another carrier or may believe that such other person did not have the proper authority to do so and again wish to be returned to their previous carriers without incurring any fees for switching. While these examples may also constitute fraud in the strictest sense of the term, there is nothing either IXCs or the Commission can do to minimize such claims. But, the fact that certain consumers are willing to accuse carriers of slamming in cases where such consumers had consented to the change should give the Commission pause in adopting any rule that enables those consumers claiming to have been slammed to receive free service. *See* discussion at Section IV(A), *infra*.

At this point, the only modifications set forth in the *Further Notice* that would appear to be required by Section 258 are the Commission's proposal to subject all telecommunications carriers, and not just IXCs, to its verification rules, *id.* at ¶12; the Commission's proposal that liability under Section 258 for slamming may be imposed upon either the "carrier that requests that a consumer's telecommunications carrier be changed," *i.e.,* the submitting carrier, or the "carrier that effects such a request," *i.e.,* the executing carrier, *id.* at ¶13;[20] the Commission's proposal that the carrier that obtained a customer in violation of the Commission's verification rules "remit to the properly authorized carrier all charges paid [by the subscriber] from the time the slam occurred," *id.* at ¶28;[21] the Commission's proposal that the authorized carrier receive from the unauthorized carrier an amount equal to the value of any premiums -- as determined by authorized carrier -- that the subscriber would have earned had he not been slammed, *id.* at ¶30;[22] and, the Commission's proposal that the unauthorized

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[20]An underlying carrier that submits PC-changes on behalf of switchless resellers should not be held liable for any slamming by such resellers.

[21]In instances where the subscriber has not paid the amounts due, the unauthorized carrier should be required to transfer the customer's invoice to the authorized carrier for billing. This would appear necessary because it is unlikely that the subscriber would want to pay the slamming carrier the charges due even upon assurance that his payments would then be remitted to his authorized carrier.

[22]The authorized carrier would then have the responsibility of ensuring that such premiums (or at least the value of such premiums) are restored to the subscriber. *Id.* at ¶30.

carrier "be liable to the properly authorized carrier for expenses incurred to collect [all] charges [and the value of premiums]." *Id.* at ¶28. Moreover, Sprint believes that the Commission's tentative conclusion to use the so-called "but-for" test developed under tort law to determine causation and assign liability as between the submitting and executing carrier, *id.* at ¶¶33-35, is reasonable and should be adopted.[23]

The other proposals set forth in the *Further Notice* are not necessary to meet the requirements of Section 258, and they do not appear necessary to deter slamming. In particular, Sprint urges the Commission not to adopt the proposals discussed below.

A. Customers Should Not Be Absolved Of The Requirement To Pay For Charges Incurred While Using The Services Of The Unauthorized Carrier.

The Commission seeks comment on whether a subscriber claiming that he was slammed should be absolved of all charges incurred during the time he was assigned to the unauthorized carrier. Under this proposal, the slammed subscriber would not

[23]At ¶31 of the *Further Notice*, the Commission proposes to require that carriers "certify that they have undertaken private negotiations" to work out disputes under Section 258 prior to bring an enforcement action before the Commission. While Sprint has no objection to such requirement -- its subsidiaries always seek to work out disputes with other carriers before incurring the expense of filing a formal complaint with the Commission -- it believes that such requirement will simply enable the unauthorized carrier to use the requirement for negotiations as an excuse to delay any payment. The unauthorized carrier could continually postpone scheduled meetings or fail to bring the persons who are authorized to negotiate on behalf of the carrier to any meetings that are held. For this reason, Sprint recommends that the Commission clarify that an authorized carrier will be able to certify that it attempted in good faith to meet with the unauthorized carrier but was unsuccessful before filing an enforcement action with the Commission

have to pay any charges assessed by the unauthorized carrier that were still outstanding and which the subscriber has not yet paid, *Further Notice* at ¶27, and would receive a refund from the properly authorized carrier of the charges already paid to the unauthorized carrier once the authorized carrier collected such charges from the carrier responsible for the slam. *Id.* at ¶29.

This is a terrible idea. The Commission itself recognizes that the proposal would "create an incentive for subscribers to delay reporting that they had been slammed" in order to receive free service, *Further Notice* at ¶27; that the proposal would also "create the potential for subscribers to fraudulently claim that they have been slammed to avoid payment for telecommunications service that they may both have requested and received," *id.;* and that, in all events, "[t]he 'slammed consumer' does receive a service, even though the service is being provided by an unauthorized entity." *LOA Order,* 10 FCC Rcd at 9579.

The main reason advanced by the Commission for its proposal is the concern expressed by the National Association of Attorneys General that an unauthorized carrier should not receive any benefit from its wrongdoing. *Further Notice* at ¶26. But, even here, the Commission acknowledges that Section 258 mitigates such concern. *Id.* Section 258 would require the slamming carrier to turn over substantially all of the revenues received (and, in some cases, more than the revenues received) while leaving it with all of the costs incurred to carry the traffic. Where it

works, Section 258 would not only prevent a slamming carrier from receiving a windfall, but punish that carrier as well. Moreover, given the fact that slamming may result from an innocent mistake rather than from deliberate wrongdoing, it would be inequitable to relieve consumers of any obligation to pay for the services they receive.

The Commission also justifies its proposal here on the grounds that the potential for fraud could be minimized by limiting the time during which the subscriber would not be liable for charges. *Id.* at ¶27. It notes in this regard that the New York Public Service Commission (NY PSC) proposed a rule to require refunds to slammed customers up to four months. *Id.* at fn. 84. However, the NY PSC did not adopt this proposal and the NY State legislature rejected it in its recently enacted anti-slamming law. Also, the use of a time limit does not lessen the opportunity for fraud; it simply restricts the time in which it must occur. This is hardly comforting. A customer intent on avoiding payment, or confident that he will successfully be able to avoid payment, can run up an enormous bill within four months. In fact, such a customer can run up an enormous bill within four hours.[24] It is, therefore, apparent that time limits will do little to curb cheating.

[24]For instance, practitioners of "clip-on" fraud can amass charges of several thousands of dollars over a single weekend by compromising a single business line connected to a PBX.

Sprint agrees that the slammed consumer should be made whole. *Further Notice* at ¶29. But this requires only that the customer be reimbursed for all carrier change charges incurred; receive a refund if the rates the customer paid the unauthorized carrier for service were higher than the rates of the authorized carrier; and receive the value of any premiums that he would have earned from the authorized carrier. Obtaining free service goes well beyond any equitable notion of making the customer whole.[25]

B. Carriers Should Not Be Required To Verify Inbound Calls.

In the *LOA Order*, the Commission concluded that carriers should be required to verify sales made as a result of a customer-initiated inbound call. It subsequently stayed the requirement in light of petitions for reconsideration by Sprint LD and others pointing out that the imposition of a verification requirement with respect to such calls would impose significant costs to remedy what all available evidence suggested was a non-

[25]It is extremely difficult for IXCs that bill through the ILECs to determine whether the customer has paid his bill. Under standard billing and collection agreements, the ILEC purchases the IXC's accounts receivable and keeps the money collected from the IXC's customers. Thus, the IXC does not know whether the customer has paid his bill. If the customer has not paid the bill, the ILEC may include the amount due in the money it "recourses" to the IXC during a quarterly true-up. The net effect of such recourse is to eliminate the money the IXC received when the ILEC purchased such subscriber's account receivable. If the Commission adopts its proposal here, the ILEC will need to specifically identify that portion of the recoursed amount associated with the unpaid bills of the slammed customers. Otherwise, the unauthorized carrier may return money to the end user which the end user did not pay. Sprint is unaware of the whether the ILEC systems can be modified to permit such identification or the expense involved in making the modifications.

existent problem. *See* Sprint LD's Petition for Reconsideration filed August 9, 1995 in this docket.

Although the Commission denied the requests for reconsideration, *Reconsideration Order* at ¶¶44-51, it again failed to supply any evidence to show that slamming was a problem with respect to customer-initiated calls.[26] It also refused to accept the information supplied by Sprint and others showing that a requirement to verify customer-initiated calls would be extremely costly. *Id.* at ¶47. Yet, the Commission supplied no evidence to suggest that such estimates were incorrect or inflated.[27] In fact, it has asked the parties to supply additional information "on the volume of in-bound calls received by carriers, and on the per-consumer costs for verification," *id.* at ¶50, because such information "could be a relevant method for considering the costs and benefits associated with extending

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[26]The Commission characterized evidence produced by petitioners showing that the number of complaints lodged by consumers who claimed to have been slammed after making an in-bound call to be *de minimis* as "anecdotal." However, the Commission's decision to require verification of in-bound calls was based on speculation that the number of such complaints might rise "if local competition develops and triggers increased marketing." *Reconsideration Order* at ¶48.

[27]*See, e.g., MCI v. FCC,* 57 F.3d 1136, 1143 (D.C. Cir. 1995) (Commission handling of evidence submitted by the IXCs that showed the "substantial conversion costs if the [RBOCs] stopped offering bundled feature groups" was "conclusory" and left the Court "with little to allay the serious concerns that the IXCs had raised.); *Illinois Public Telecommunications Association v. FCC,* 117 F.3d 555,563-64 (D.C. Cir. 1997) (FCC failed to respond to record evidence showing "the costs of different types of payphone calls are not similar" and "cavalierly proclaims that the costs of local coin calls versus 800 and access cost calls are 'similar' *without even acknowledging any of the contrary data*") (emphasis in original).

the verification rules to in-bound calls." *Id.* at ¶47.

Sprint appreciates the fact that the Commission is seeking information to conduct a cost-benefit analysis of the in-bound verification requirement before it lifts the stay. Obviously, this type of analysis, based on hard evidence, is a pre-requisite to imposing any regulation. Sprint is firmly convinced that the Commission's analysis here will clearly demonstrate that verification of customer-initiated calls will impose substantial costs on carriers but will fail to effectively address the root causes of slamming.

The costs that Sprint LD would incur if it were required to verify in-bound calls would, as it reported previously to the Commission, be substantial. Sprint LD estimates that its costs to perform such verification would amount to $___ million for the year 1998, which would increase Sprint's annual verification costs by approximately 50 percent. Sprint would also incur start up of costs of approximately $_____. This would add approximately $___ to the cost of obtaining a customer through Sprint LD's in-bound calling sales channel.[28]

On the other hand, any benefits that might be realized from such verification requirement are difficult to ascertain. As

[28]On average, Sprint receives ____ million calls a year from customers responding to Sprint's marketing efforts. Anywhere from 40 to 60 percent of such calls result in a sale.

stated, the Commission has not provided any information to demonstrate that a slamming problem exists with respect to in-bound calling, and the only evidence in the record suggests otherwise. But even assuming, *arguendo*, that slamming of consumers who initiated calls to carriers was occurring with greater frequency than is currently the case, there has been no showing that verification of in-bound calls would be efficacious in reducing the incidence of such slamming.

If, contrary to Sprint's arguments here, the Commission decides to lift the current stay, it should clarify that the requirement for verification applies only when the consumer who has called the carrier is switching his basic dial service to that carrier from another provider. Thus, verification would not apply to consumers who are subscribing to service for the first time; to consumers who call their current carriers to order new or additional services and features; to customers who have called their PC because they have been slammed and want the PC to ensure that they are returned to the PC's service; or to customers who call their PC on another matter, are informed that they are no longer the PC's customers, realize that they have been slammed and request that the PC ensure that they are returned to the PC's service.[29]

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[29]If a customer calls a carrier about his current service, *e.g.*, local service, and the carrier takes the opportunity to convince the customer that he should switch his service provider in another market, *e.g.*, the interexchange market, to the carrier's affiliate in that market, such sale

Footnote continues next page.

C. Carriers Should Not Be Required to Verify PC Freezes.

The Commission has incorporated MCI's rulemaking petition regarding PC freezes into this proceeding and requests that parties submit comments on two additional issues in connection with such freezes. First, it requests comment on whether it should require carriers to verify PC-freeze solicitations. *Further Notice at* ¶24. Such requirement is unnecessary and would impose additional costs on carriers without any corresponding benefits. The problem of PC freezes in not lack of verification but the fact that, as documented by Sprint LD in its Comments on MCI's petition, certain ILECs are using PC freezes as an anticompetitive tool to inhibit competitive entry into their formerly protected markets. To deter such anticompetitive behavior, the Commission should adopt the measures suggested by Sprint for the short-term and eventually assign responsibility for administering the PC freeze process to a neutral third party.[30]

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should be viewed as having resulted from outbound telemarketing and must be verified. A ILEC receiving a call from a customer seeking to subscribe to a IXC must comply with all equal access requirements.

[30]The short-term measures recommended by Sprint include, at a minimum, a requirement that each ILEC designate certain personnel separate from those assigned to the sales and marketing functions of the ILEC to handle all requests by customers to implement or remove a freeze; a requirement that each ILEC treat a request for such a change as ministerial and not as an opportunity to market the interLATA services of its interexchange affiliate or its offerings in the intraLATA and local markets to callers wishing to install or remove a PC freeze; a requirement that the ILEC maintain strict neutrality in the administration of the PC freeze process so that it is just as easy for a competitor to initiate or remove a freeze as it is for the ILEC (or ILEC-affiliate) itself; a requirement that ILECs obtain a customer's freeze on an individual market basis, *i.e.*, interLATA, intraLATA and local; and, a

Footnote continues next page.

Second, the Commission seeks comment on whether it should require the ILECs to send subscribers information about PC freezes. *Further Notice* at ¶23. Again, there is little justification for subjecting the ILECs, and ultimately their customers, to the costs of complying with such a requirement. As the Commission appears to recognize, requiring that the ILECs send information to their customers regarding PC freezes would enable the ILECs to market freezes to limit inroads into their markets. Although the Commission seeks to draw a contrast between materials that inform subscribers about the availability of a freeze (a lawful practice) and promotional materials that induce the customer to institute a freeze (an unlawful practice), *id.*, the distinction is so amorphous as to make it inevitable that numerous disputes will arise as to whether freeze materials fell into one or the other category. These numerous disputes will, in turn, lead to the institution of numerous Section 208 complaint proceedings, *id.* at ¶24, where ultimately meaningless distinctions will be brought to the Commission for resolution. This would hardly be a wise use of the Commission's resources, or, for that matter, the resources of the parties.

requirement that the ILEC provide information regarding PC freezes upon reasonable request to another carrier to the same extent as it provides such information to its own business office.

V. CONCLUSION

Sprint respectfully suggests that any Commission effort to reduce the incidence of slamming must proceed along the lines Sprint has recommended herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS** of Sprint Communications Company, L.P. was sent by hand or by United States first-class mail, postage prepaid, on this the 15th day of September, 1997 to the parties on the attached list.

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