

*hunter communications law group*

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ORIGINAL

December 7, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 - 12th Street, S.W.  
TW-A325  
Washington, D.C. 20554

**Re: Ex Parte Presentation in CC Docket No. 94-129**

Dear Ms. Salas:

Today the undersigned, accompanied by Ernest B. Kelly, III and Stephen D. Trotman, President and Director of Local Services, respectively, of the Telecommunications Resellers Association ("TRA"), met with Kyle Dixon, Common Carrier Advisor to Commissioner Michael K. Powell. Discussed at that meeting were issues of concern to the membership of TRA with respect to the Commission's proposed rules which will implement measures to safeguard consumers from unauthorized carrier changes. The positions articulated by TRA at the meeting are set forth in the materials attached hereto, which were distributed at the meeting by TRA.

Respectfully submitted,



Charles C. Hunter  
General Counsel to the  
Telecommunications Resellers Association

Enclosure

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**TELECOMMUNICATIONS RESELLERS ASSOCIATION**

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**CC DOCKET No. 94-129**

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**Implementation of Subscriber Carrier Selection  
Change Provisions of Telecommunications Act of 1996**

**Policies and Rules Concerning Unauthorized  
Changes of Consumers' Long Distance Carriers**

**Ex Parte Presentation**

**December, 1998**

# TELECOMMUNICATIONS RESELLERS ASSOCIATION

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### The Telecommunications Resellers Associations and Its Members:

- ✓ More than 750 entities engaged in, or providing products and services in support of, telecommunications resale
- ✓ Largest association of competitive carriers, including large majority of IXCS and majority of competitive LECs
- ✓ Providing long distance, local exchange, international, wireless, Internet, enhanced and other services
- ✓ Small to mid-sized carriers serving primarily small business and residential customers
- ✓ "Switchless" and switched- and facilities-based providers

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### Slamming Is An Industry Problem, Not A Small Carrier Or Resale Carrier Problem

- √ FCC lists 28 IXCs with more than 100 slamming complaints (in 1996) and 50 IXCs with more than 50 total complaints (in 1997)
- √ Six carriers were responsible for more than 50% of the listed slamming complaints and four carriers were responsible for more than 50% of the listed total complaints
- √ AT&T, MCI, Sprint and WorldCom were responsible for more than one third of the listed slamming complaints and more than 50% of the listed total complaints
- √ Five carriers were responsible for more than 50% of the remaining listed slamming complaints and ten carriers were responsible for more than 50% of the remaining listed total complaints

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### Entities Most Victimized By Unauthorized Carrier Changes

- ✓ Consumers whose preferred carriers are changed without their consent
- ✓ Small carriers whose customers are taken without compensation

	Carrier A	Carrier B	Carrier C
Total Customers	3,000	30,000	3,000,000
Slammed Customers	300	300	300
Percentage Impact on Base and Revenues	10%	1%	0.01%

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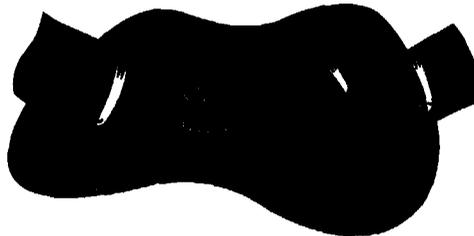
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### Striking the Appropriate Balance

Preventing Slamming



Preserving Competition  
Protecting Small Business  
Maintaining Due Process  
Minimizing Consumer Fraud

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### Concerns and Recommendations

- √ Competitive entry and the competitive provision of service should not be impeded by well-intentioned, but ill-advised, safeguards against slamming
  - Surety bonds and other financial guarantees will limit market entry by small entities and tie up small carriers' working capital
    - Surety bonds must be fully cash collateralized by small entities
  - Market entry requirements should be linked to past slamming violations, rather than to financial guarantees
  - At a minimum, existing carriers should be "grandfathered" under any financial guarantee requirements

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### Concerns and Recommendations

- √ Efforts should be made to minimize cost and administrative burdens on small carriers
  - Current telemarketing verification procedures are expensive, but necessary to ensure validity of telemarketing sales
  - Additional requirements would be burdensome for small carriers
    - Surety bonds and other financial guarantees
    - Audit requirements
  - Customer notification is the industry norm

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### Concerns and Recommendations

- √ Carriers should not be denied basic due process rights in the zeal to prevent slamming
  - Provide a means by which the burden of proof can be shifted from the respondent carrier to the complaining consumer – *i.e.*, a showing by the respondent carrier of compliance with FCC requirements
  - Distinguish between intentional and inadvertent unauthorized carrier changes and between unauthorized carrier changes attributable to the IXC and those attributable to local exchange carrier error
  - Establish speedy, streamlined, consumer-friendly (*e.g.*, telephonic) procedure for resolution of slamming-related complaints

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### Concerns and Recommendations

- √ Regulation shouldn't merely replace one form of unlawful conduct -- *i.e.*, slamming -- with other unlawful activity -- *i.e.*, consumer fraud
  - Set strict limits on the extent to which consumers may be relieved from paying for telephone services received -- *e.g.*, time limits (30 days), intent limits (intentional vs. inadvertent switches), etc.
  - Establish a rebuttable presumption against consumers who allege two or more instances of slamming
  - Ensure prompt resolution of slamming-related complaints
  - Establish penalties for multiple bad faith, false slamming allegations

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### The Ultimate Remedy for Slamming

Enforcement

Penalties

Fines

Enforcement

Penalties

Fines

Enforcement

Penalties

Fines

Enforcement

Penalties

Fines