

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

COMMENTS OF THE MONTANA PUBLIC SERVICE COMMISSION
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The Montana Public Service Commission commends the FCC for implementing rules in the *Second Report and Order* in this docket that should reduce the incidence of slamming and provide consumers with stronger protections, both before a carrier change is executed and after a slam occurs. Some of the key changes to the FCC's slamming rules were adopted in Montana in 1997 when the Montana Legislature enacted an anti-slamming law and the Montana PSC adopted rules to implement it.

The Montana PSC submits these comments in response to the FCC's request for additional comments on the eight unresolved slamming-related issues identified in the FCC's *Further Notice of Proposed Rulemaking* in CC Docket No. 94-129.

- 1. Recovery of additional amounts from unauthorized carriers.** The Montana PSC supports the FCC proposal to permit authorized carriers to recover from unauthorized carriers double the amount of charges paid by slammed subscribers, or, in instances where the subscriber has not paid the unauthorized carrier's charges, the amount for which the subscriber was absolved. This would enable authorized carriers to provide a refund or credit to slammed subscribers while keeping the amount they would have received in the absence of an unauthorized change. The Montana PSC believes that full "absolution" of charges for a longer period of time than the 30 days allowed by FCC rule provides the most appropriate consumer protection, deterrent to slamming and simplest way to administer dispute resolution. As an example, the Montana PSC's anti-slamming rules provide that slammed consumers are not liable for payment of any charges to the unauthorized carrier for a period of six continuous months after the slam occurred. However, the Montana PSC agrees the FCC's proposed rule would provide an improved economic disincentive to slamming over the existing FCC rule and would provide

slammed consumers and authorized carriers with the opportunity to obtain at least some reimbursement from the slamming carrier. We also recognize the constraints imposed on FCC action by Section 258 of the Telecommunications Act of 1996.

2. **Resellers and CICs.** The Montana PSC strongly supports the FCC's efforts to require switchless resellers to have their own carrier identification codes (CICs) to alleviate the problems of "soft slams," incorrect identifications of consumers' chosen carriers by local exchange companies and consumers, and ineffective preferred carrier freezes. The Montana PSC prefers the FCC's Option 1, which would require resellers to obtain individual CICs by purchasing translation access from LECs. Presumably, purchase of translation access only without Feature Group D trunk access would allow resellers to obtain individual CICs at a reasonable cost. This cost would be borne by the switchless reseller, which in turn would recover the expense from customers that subscribe to its service. In contrast, it appears the cost of implementing "pseudo-CICs" as contemplated in Option 2 would be borne primarily by the LECs, and they likely would seek to recover their costs from all their ratepayers. Option 1 is preferable because the resellers' translation access costs would be recovered from consumers who choose to change carriers; under Option 2, all ratepayers could end up footing the bill, even if they never change carriers.

If the FCC cannot get its CICs from Option 1 for some reason, the pseudo-CIC option is preferable to no CICs at all. Perhaps it would be possible to require LECs to recover their costs in a charge assessed on carriers, rather than ratepayers. If Option 2 is adopted, the Montana PSC recommends the pseudo-CIC assignments be standardized so that each reseller can be easily identified.

The FCC seeks comment on whether facilities-based carriers should be required to modify their billing records to allow identification of resellers on the consumer's bill. The Montana PSC believes it is a fundamental right of consumers to know which carrier is providing them with phone service and billing them. Certainly phone bills should identify customers' carriers, whether or not they are resellers. This requirement takes on added importance because the FCC absolves customers of liability for payment of charges to unauthorized carriers for just 30 days after the slam occurs. Often consumers do not realize they have been slammed for months because currently their phone bills may not correctly identify the carrier to which they are presubscribed.

Regarding soft slams, the Montana PSC assumes the FCC treats them in the same manner for enforcement purposes as any other kind of unauthorized carrier change. The unauthorized carrier in a soft-slam situation may claim the slam was inadvertent or unavoidable, but soft slams between resellers and their underlying facilities-based carriers occur because either the reseller or the carrier employs a procedure in which exiting customers are deleted from one company's database only to be retained by the other company, which thereby takes over the customer's service without obtaining prior authorization in accordance with FCC rules. The effect on the customer is the same as with any other kind of slam -- somehow his or her carrier has been switched without his or her permission. Resellers and their underlying facilities-based carriers should be expected

to devise procedures to eliminate soft slams and, in the meantime, follow the FCC's rules for obtaining new customers or face the consequences.

3. **Independent third party verification.** The Montana PSC agrees with the position of the National Association of Attorneys General (NAAG), that independent third party verification should be separated completely from the sales transaction because a verification call initiated by the carrier is not truly independent. The Montana PSC does not object to the concept of automated third party verification but questions whether it could be done independently of the telemarketing carrier. If a method is developed to employ independent automated third party verification, the FCC should require that it provide an option to the consumer to talk to a "live" person by pressing "0" on the phone and that the entire transaction be cancelled if the consumer hangs up before the end of the verification.

As NAAG suggested, the FCC should consider defining the format and content of the third party verification so that all carriers use a standardized script from which they may not deviate.

4. **Carrier changes using the Internet.** The Montana PSC does not believe a carrier change submitted over the Internet should be considered to be the same as a written authorization. No signature is obtained in Internet transactions that can be compared to the customer's actual signature when resolving disputes. It may be that obtaining the consumer's credit card number would provide sufficient proof that the consumer authorized the change as well as proof of the consumer's identity. Certainly Internet solicitations to consumers should comply with the FCC's rules requiring separate statements regarding choices of local, interLATA and intraLATA toll services.
5. **Definition of "subscriber."** The Montana PSC supports a definition of subscriber that includes only the person or persons listed by the local exchange carrier as the subscriber(s) on that telephone line. To expand that definition to include other persons designated by the telephone line subscriber as authorized to make telephone decisions invites disputes over carrier changes because the switching carrier will not know which persons in a household or business are authorized by the subscriber.
6. **Submission of reports by carriers.** To facilitate its enforcement efforts, the FCC should require carriers to report the number of slamming complaints they receive from customers on a monthly basis. The reports should identify the carrier name and number of complaints about each carrier.
7. **Registration requirement.** The Montana PSC supports the FCC's proposal to require interstate carriers to register and to enable the FCC to revoke or suspend, after notice and opportunity to respond, the operating authority of carriers that fail to register or that provide false information in their registration.
8. **Third party administrator for preferred carrier changes and preferred carrier freezes.** The Montana PSC is skeptical that establishment of an independent third party

administrator to perform carrier changes, verification and preferred carrier freezes and slamming dispute resolution would be effective against slamming or friendly to consumers. Such an entity probably would be concerned only with applying and enforcing the FCC slamming rules, when some states' consumers would be better served if their states' slamming laws and rules were applied and enforced. The entity that performs carrier changes, verification and preferred carrier freezes should not be the same entity that handles disputes resulting from carrier changes because it would not be a neutral party. It appears that carriers could choose to use the proposed third party administrator or not, which likely would mean that the industry's bad actors would continue their present deceptive practices. The Montana PSC cannot estimate what it would cost to establish and operate such an entity, but it has been our experience in dealing just with slamming dispute resolution that it is a time-consuming and labor-intensive process requiring multiple contacts between our staff and the consumer, the unauthorized carrier and the local phone company. When taking into consideration the huge volumes of carrier changes, verifications and freeze transactions that are today handled by hundreds of local and long-distance carriers (to say nothing of the slamming dispute resolution process), it is obvious that the staff and resources necessary to establish and operate a third party administrator entity would be very costly.

Thank you for the opportunity to comment.

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