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Pat Wood, III
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Judy Walsh
Commissioner

Brett A. Perlman
Commissioner

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March 26, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TWA-325
Washington, DC 20554

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MAR 30 1999
FCC MAIL ROOM

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

Dear Secretary Salas:

Enclosed herewith for filing with the Commission are an original and four copies of the Comments of the Public Utility Commission of Texas in the above-captioned matter. We are also providing copies to the Common Carrier Bureau and to ITS.

Sincerely yours,

Saralee Tiede
Chief, Office of Customer Protection

cc: Common Carrier Bureau (ATTN: Kimberly Parker)
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 30 1999

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In the Matter of §
§
Implementation of the Subscriber Carrier §
Selection Changes Provisions of the §
Telecommunications Act of 1996 §
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Policies and Rules Concerning §
Unauthorized Changes of Consumers' §
Long Distance Carriers §

CC Docket No. 94-129

**MOTION TO ACCEPT LATE-FILED
COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

In its Further Notice of Proposed Rulemaking (FNRM) in this proceeding published in the Federal Register on February 16, 1999, the Commission requested further comments on its several proposals to further strengthen the Commission's current slamming rules. The deadline for filing comments in response to the FNRM was March 18, 1999. Although our Comments were completed on March 17, 1999, our next scheduled Open Meeting was not until March 25, 1999, when the attached Comments were adopted. We, therefore, request your consideration of the attached Comments in this proceeding.

Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

March 26, 1999

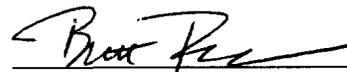
CC Docket No. 94-129
Motion
March 26, 1999



Pat Wood, III
Chairman

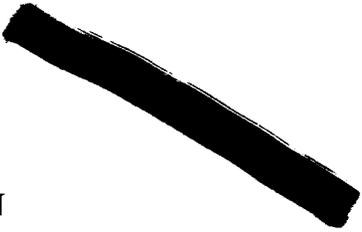


Judy Walsh
Commissioner



Brett A. Perlman
Commissioner

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



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In the Matter of

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

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

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CC Docket No. 94-129

COMMENTS OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

Pat Wood, III, Chairman

Judy Walsh, Commissioner

Brett A. Perlman, Commissioner

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF
THE PUBLIC UTILITY COMMISSION OF TEXAS**

Executive Summary	3
Introduction	4
A. Recovery of Additional Amounts from Unauthorized Carriers	4
B. Resellers and CICs	5
C. Independent Third Party Verification	6
D. Carrier Changes Using the Internet	8
E. Definition of "Subscriber"	9
F. Submission of Reports by Carriers	11
G. Registration Requirement	11

Executive Summary

The Public Utility Commission of Texas (PUCT) strongly supports the efforts of the Federal Communications Commission (FCC) to provide customers with additional protections from slamming in the telecommunications marketplace. In fiscal year 1998, the Office of Customer Protection at the PUCT received more than 12,000 complaints about slamming from Texas citizens. Slamming remains the source of the largest number of complaints in fiscal year 1999, to date. Any procedures to effectively deter and prevent slamming are more than welcomed by the PUCT.

Pursuant to the Further Notice of Proposed Rulemaking in CC 94-129, the following comments of the PUCT primarily focus on the FCC's proposals to forestall slamming wherever possible and to strengthen enforcement measures in those instances where slamming abuses continue. At this time, the PUCT does not address the issue of a third party administrator for execution of preferred carrier changes and preferred carrier freezes or procedural matters. Therefore, the PUCT takes no position on the following proposal: Section IV, Subsection H, Paragraphs 183-184, Third Party Administrator for Execution of Preferred Carrier Changes and Preferred Carrier Freezes.

**COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS
TO THE
FURTHER NOTICE OF PROPOSED RULEMAKING IN FCC 98-334 (TO
FURTHER STRENGTHEN ANTI-SLAMMING RULES)**

On December 17, 1998, the Federal Communications Commission (FCC) adopted its "Second Report and Order and Further Notice of Proposed Rulemaking (FNPRM);" on December 23, 1998, the FCC released this report, order, and notice; and, on February 16, 1999, the FCC published this report, order, and notice in the Federal Register, Volume 64, Number 30. The Public Utility Commission of Texas (PUCT), with general regulatory authority over public utilities within its jurisdiction in Texas, submits the following comments on Section IV, Further Notice of Proposed Rulemaking.

A. Recovery of Additional Amounts from Unauthorized Carriers (Paragraphs 140-144) Deterring slamming should be paramount in any consideration of "the tension between compensating consumers and compensating authorized carriers, while maintaining a strong deterrent effect against slamming." The FCC's proposal in Paragraphs 141 and 142 will go a long way towards reaching that goal. However, in the rule as in Section 258, there should be clarification that the double charges when a subscriber has paid the unauthorized carrier for the first 30 days are in addition to, not in lieu of, any other penalties that may be imposed under federal or state law.

If the customer pays the unauthorized carrier for charges beyond the first 30 days, the authorized carrier should collect from the unauthorized carrier all of the money that the customer paid. The authorized carrier would then be permitted to keep the lesser of: 1) the amount the customer would have paid on the authorized carrier's rates; or, 2) the amount actually paid to the unauthorized carrier. If the amount paid to the unauthorized carrier is more than would have been paid to the authorized carrier, the difference should be returned to the customer. Under the proposed rule, the authorized carrier is allowed to recover the costs of collecting this money and, also, receives payment for service it did not provide. The customer should be entitled to any amount that has been overpaid based on the authorized carrier's rates to minimally compensate the person for the inconvenience and aggravation of the slam. This arrangement also removes *all* financial incentive from slamming since the unauthorized carrier ends up with nothing except costs for its illegitimate efforts.

B. Resellers and CICs (Paragraphs 145-164) The PUCT strongly supports the proposition that *all* carriers, whether facilities-based or resellers, must have individual identifiers. This Commission has encountered at least one major carrier that vehemently claims a "soft slam" is not really a slam because the CIC has never changed. Although this argument is not a winner, it would be very helpful for enforcement efficiency if the basis for this position were unequivocally eliminated. In addition, it has been the experience of the PUCT that the facilities-based carriers, collection agents, and billing aggregators frequently are unable or unwilling to

provide the information necessary to contact the true carrier with which the facility-based carrier shares a CIC. With a unique numerical code assigned for each carrier, the LEC would easily be able to identify any carrier that made any switch (authorized or unauthorized) in a customer's service. This arrangement allows preferred carrier freezes to operate as intended as long as the LEC is not in competition with any of the carriers for which a freeze is requested. As competition in local exchange service increases and as the LECs move into the long distance marketplace, the LECs will no longer be a neutral administrator for preferred carrier freezes and a new system should be implemented.

Although unique CICs for each carrier, as proposed by "Option 1" in Paragraphs 154-156, is acceptable to the PUCT, this Commission prefers the carrier identification method of "Option 2," the pseudo-CIC for resellers, as outlined in Paragraphs 157-159. This procedure would provide useful information about the actual carrier as well as the underlying facilities-based carrier, where applicable. The pseudo-CIC proposal is even more attractive if a unique pseudo-CIC suffix would be required for use by all facilities-based carriers to identify the same reseller. One advantage to this last proposal is number conservation since each of the facilities-based carriers and the resellers would be assigned a single numeric sequence no matter which underlying carrier is the wholesaler to a reseller. Also, the reseller and the facilities-based carrier would be easily recognized by anyone familiar with the pseudo-CIC system.

It appears to the PUCT that "Option 3," as described in Paragraphs 160-161, has the greatest potential for difficulty of the trio of choices. Requiring a facilities-

based carrier to use its systems to help prevent “soft slams” and to help customers identify resellers on a telephone bill is idealistic, but ultimately impractical. The increased cost of doing business as a result of this requirement would only be passed on to customers. Further, the possibility for anti-competitive behavior and conflicts of interest for the underlying carrier in a competitive environment is very high and should not be allowed to develop in spite of the good intentions of “Option 3.”

The PUCT does not know the cost to the facilities-based carriers for implementation of the proposals in Paragraph 162. However, this Commission believes that every bill should identify the customer’s actual carrier and how to contact that carrier. If the FCC decides against unique identifiers for both underlying carriers and resellers, then it will be necessary for the identity and contact information of any underlying facilities-based carrier to be clearly available on every telephone bill. This would be particularly helpful to customers who are “soft slammed” since a shared CIC may mask the identity of the true slammer. The PUCT believes that there must be complete truth-in-billing and supports any mechanism that provides a customer with easily obtainable, plain language information that provides the identity and contact information for the customer’s actual carrier.

C. Independent Third Party Verification (Paragraphs 165-168) The Webster’s Dictionary definition of “verify” is “to establish the truth, accuracy, or reality of” the subject of the verification. “Confirm” is identified as a synonym for “verify.” In theory, the verification procedures required by the FCC and followed by the PUCT are intended to confirm the truth of the information provided by a customer

to authorize a switch in the customer's telecommunications service. In practice, the prescribed methods do not confirm the truth of the information. They merely confirm the consistency between the information given by a person during the initial marketing pitch and the information provided by that same person on an LOA, through an electronic process, or to an independent third party.

The LOA is faulty because it does not prove that the person signing the document is the person whose name appears on the LOA or that the person who signs the LOA is authorized to switch the service of the telephone account. Providing a mother's alleged maiden name or a date of birth is proof of nothing if the person who gives the information is not the person whose name appears on the LOA or is not authorized to switch the service. The marketer who obtains an LOA from an apparent customer has no way of knowing the truth or falsity of the information given. Similarly, independent third party verification (ITPV) is not confirmation of the truth (i.e., that the person is who the person says he or she is and that the person has authority to make a switch in service.)

Section 258 clearly states that no change in a customer's telecommunications exchange service shall be made "except in accordance with such verification procedures as the [FCC] shall prescribe." However, it is difficult for an enforcement agency to penalize a carrier for slamming when the company followed the prescribed verification procedures to the letter, but a person who was not even aware of or involved in the transaction got slammed through the mistake or fraud of another person. Nonetheless, the burden for implementing a real verification process remains with the telecommunications carriers since the carriers assume the risk of running

afoul of FCC and state regulations. This whole minefield of verification procedures warrants a serious re-examination by the FCC and a concerted effort by regulatory agencies and the telecommunications industry to find a process that achieves the intended goal of true “verification.”

Given the current verification procedures, the PUCT is convinced that the best practice for ITPV is the audio-recording of the *entire* transaction for making a change in a customer’s telephone exchange service. This includes a taping of the sales promotion, the customer’s response to the pitch, and the ITPV. The marketing pitch along with a customer’s remarks may reveal that the customer had no real understanding of what was offered and what acceptance really meant. Deceptive and unfair trade practices are often detected through recordings of the original sales promotion.

This Commission agrees completely with NAAG and its suggestion in Paragraph 166 for total separation of the sales transaction from the verification (i.e., no three-way calls among marketers, customers, and verifiers.) The PUCT interprets the meaning of “independent” in ITPV to be “free of any influence or presence of a salesperson.” (For efficiency, it may be acceptable for a marketer to connect the customer with the verifier, but as soon as the connection is made, the sales person must disconnect from the call.)

With respect to the various proposals for “live” and automated or electronic ITPV, the PUCT believes that either format is acceptable as long as all of the following conditions are met:

1. The verifier must be truly independent from the marketer with respect to business relationship, physical location, and participation in the ITPV.
2. The verifier must not give any information or answer any questions about the subject of the sales promotion.
3. The verifier must not give any information other than to eliminate any misunderstanding the customer may have about the verification process or the verification questions.
4. The entire transaction (i.e., the sales promotion, the customer's response to the pitch, and the ITPV) must all be audio-recorded.

The PUCT agrees with the NAAG proposal in Paragraph 168 to have “the [FCC] define the format and content of the third party verification.” This Commission would support a procedure that incorporates the four requirements listed in the previous paragraph. An FCC-mandated form and script would be advantageous in providing unequivocal criteria for determining the adequacy and propriety of any carrier's ITPV processes. The standard to be met would be clearly identified for both the telecommunications industry and regulatory agencies.

D. Carrier Changes Using the Internet (Paragraphs 169-175) The advent and democratization of the Internet in the past decade has forced government at all levels to respond to the ever-expanding use of cyberspace. Most courts now accept electronic filings via Internet connections. The PUCT believes that the use of the Internet for switching telecommunications carriers presents different,

but no more difficult issues than face-to-face sales, telemarketing, or direct mail promotions of these companies.

There is a natural tension in the utilization of the Internet, which is perfectly described in Paragraph 169: “[T]he Internet is a quick and efficient method of signing up new [customers] and should be made widely available.... [However, i]t is the very ease with which a [customer] may change carriers using the Internet that also makes the Internet fertile ground for slamming.” Paragraph 170 addresses the issues surrounding ITPV of Internet carrier changes. There are a number of ways to effectively provide ITPV following a cyber-request by a customer to switch carriers. The verification could be accomplished by telephone contact from the third party, e-mail, or “snail mail.” The conventional postal method would use an LOA. The e-mail process would need to be a carefully scripted set of questions sent by the third party after a prescribed period of time (e.g., 24 hours) from the original Internet solicitation to change carriers.

The question raised in Paragraph 171 about the validity of a cyber-LOA vis-à-vis the signature requirement of the current FCC rules is somewhat problematic, but not insurmountable. As noted above, many courts are routinely accepting filings over the Internet and by FAX. Neither of these filing methods provides an original signature in the traditional manner (i.e., the Internet filing has an electronic signature and the FAX filing has a copy of the original signature.) It would seem that if the tradition-bound, precedent-based, American judicial system has managed to move into the world of cyberspace, then executive branch agencies of government should be able to make the same leap forward. If the courts accept electronic and FAXed

signatures, then these same types of signatures meet the signature requirements of the FCC rules.

In its comments, the FCC leans towards disallowing the use of the Internet to satisfy its LOA requirements. The concerns raised by the FCC include the “[belief] that the electronic signature fails to identify the ‘signer’ as the actual individual whose name has been ‘signed’ to the Internet form [and] that the electronic signature fails to identify the ‘signer’ as an individual who is actually authorized to make telecommunications decisions.” As noted earlier by the PUCT, these same issues are germane to the paper LOA or a telemarketing solicitation for a carrier change. As long as the FCC continues to accept a paper LOA or the results of telemarketing, then an Internet LOA should not be rejected for these particular reasons.

Paragraph 172 suggests the possibility of using a customer’s credit card to “provide sufficient proof that a [customer] authorized a carrier change and that the submitting person is actually the [customer].” The federal and state credit protections offered by use of a credit card have great appeal from a customer protection standpoint. If there is any question by the customer about the validity of the carrier change, the credit safeguards are protections in addition to the federal and state anti-slamming laws and regulations. The disadvantages of requiring the use of credit cards for Internet carrier switches include the possibility that a customer does not have a credit card and that it limits the customer’s choice of payment method.

The FCC also asked about the use of “certain personal information, such as social security number or mother’s maiden name, to ensure that only the [customer] may change his or her own carrier.” The PUCT believes that requiring this

information for a valid Internet carrier switch is no more or less effective than in telemarketing sales and subsequent ITPV. The verifier has no way of knowing if the person is giving an accurate name or number when asked for this data. This process does not necessarily confirm the truth; it only produces information, which may or may not be true, to fill the blanks on a form or in a script. In addition, the PUCT opposes the use of social security numbers as verification data. Experience in Texas indicates that people are unwilling to reveal social security numbers to unknown persons over the telephone. Requests for birth month and day or a mother's maiden name are perceived as less invasive to an individual's privacy in a telemarketing context.

The PUCT agrees with the FCC's tentative conclusion in Paragraph 174 that all LOAs, including any cyber-LOA that might be approved by the FCC, must "contain separate statements regarding choices of interLATA and intraLATA toll service." This Commission finds that customers are better protected and make more informed choices when the LATA options are separate and distinct. The PUCT sees no reason to change the FCC rule in this area for carrier changes effected over the Internet.

Paragraph 175 requests comment on whether verification should be required for preferred carrier freeze requests via the Internet. The PUCT believes that these requests should be handled in the same manner as the FCC mandates for carrier switches over the Internet. The FCC should also review the proposal of the Federal Trade Commission in FTC File No. R611016 in which the FTC suggests the use of

password assignments which could also protect customers from fraudulent or erroneous switches in carrier service.

E. Definition of "Subscriber" (Paragraphs 176-178) This is a contentious issue with which the PUCT has dealt since the Texas anti-slamming legislation became effective on September 1, 1997. The experience of this Commission is that the industry paints with the widest brushstroke to include as many people as possible as principals or agents authorized to make carrier changes. The PUCT has taken a fairly narrow position in the matter. For residential telephone accounts, only the person(s) in whose name(s) the account is listed and billed is (are) authorized to make switches in telecommunications carriers. The only exception is the spouse of an account holder who, pursuant to community property laws in Texas, has responsibility and authority in this type of commercial transaction.

For business accounts, the PUCT has adopted "a reasonable and prudent person" standard. When a person indicates that he or she is authorized to change the carrier for the business, the marketer should ask what the person's title or position is in the company. A reasonable person would assume that an owner, manager, CEO, president, etc., is authorized to switch carriers for the business. The prudent person would err on the side of caution if there is any question about the person's actual authority. Ultimately, each telecommunications carrier must make a cost/benefit analysis and weigh the risk of committing a slamming violation and the imposition of a penalty in an amount of up to \$5,000 per day in Texas. The PUCT has found that a

strict interpretation of “subscriber” is in the best interest of the customer. It sends the telecommunications industry a tough message of intolerance for the practice.

In Paragraph 176, the FCC appears to support the proposition “that allowing the named party on the bill to designate additional persons in the household to make telecommunications decisions could promote competition because carriers would be able to solicit more than one person in the household.” The PUCT opposes this suggestion for several reasons. First, as noted in Paragraph 177, “the adoption of such a proposal could lead to an increase in slamming.” The ability of a scam artist to fraudulently submit a request for a change expands dramatically with any increase in the number of authorized decision-makers in a household.

Second, possibility for conflicts within the household about a carrier of choice increases in direct proportion to the number of authorized decision-makers. Two or more people at the same residence could authorize two or more carriers for service without knowing what anyone else has authorized. The potential for frequent and conflicting changes makes this proposal inefficient and impractical.

Third, the experience of the PUCT clearly indicates that the marketers have no way of knowing with certainty who is or is not authorized to make a switch in telecommunications service. The FCC states in Paragraph 177 that “[i]f the definition of a subscriber is limited to the party named on the bill...a carrier would know conclusively that it may only submit changes authorized by persons named on the bill.” However, this Commission has repeatedly run into the claim of long distance carriers that the LECs are absolutely unwilling to share or release their account holder information. The LECs claim that the information is proprietary and that they are not

required to disclose this data to potential competitors. The FCC correctly notes that the need for constant updating and cross-checking of these lists would be an onerous burden for the telecommunications companies.

On this subject of a definition of “subscriber,” the PUCT favors a slight variation of the SBC suggestion in Paragraph 176. This Commission proposes that a “subscriber” means “any person, firm, partnership, corporation, or other entity that is lawfully authorized to order or change telecommunications services supplied by a telecommunications service provider.” This definition allows for differences among the federal and state laws in legal areas such as family law (e.g., community property), creditor/debtor law, business law (e.g., principal and agent relationships), contract law (e.g., vis-à-vis minors), etc.

F. Submission of Reports by Carriers (Paragraph 179) The PUCT believes that a reporting requirement is very useful for detecting trends in slamming activity before it becomes a large problem. It also is helpful in verifying the extent of a carrier’s slamming activity since it is widely acknowledged in enforcement circles that the actual number of complaints to any enforcement agency represents “only the tip of the iceberg.” For the near future, the LECs are a better source for this information because of their knowledge of disputed carrier changes. This arrangement is workable if each carrier, whether facilities-based or reseller, has its own numeric identifier and only as long as the LECs are not in the long distance business. Currently, the PUCT is implementing a project in which the major LECs

are submitting monthly reports of the number of disputed telecommunications service changes identified by carrier.

The PUCT further believes it would be extremely helpful if authorized carriers were required to report validated slams and to provide, upon request, state and federal regulatory agencies with all documentation verifying an unauthorized switch in service. These requirements would significantly enhance enforcement efforts at the federal and state levels.

G. Registration Requirement (Paragraphs 180-182) The PUCT strongly supports the FCC's proposal in Paragraph 180 to "impose a registration requirement on [all] carriers who wish to provide interstate telecommunications service." This Commission agrees with the FCC that such a requirement would aid in excluding the unscrupulous, incompetent, and otherwise unqualified operators from the telecommunications marketplace. It would also be extremely helpful in locating resellers. The PUCT has had the same experience as the FCC as described in Footnote 468. Currently, it is a time-consuming and often frustrating exercise to find the necessary addresses and telephone numbers.

The registry should be consolidated in a single location, preferably a database with read-only access for any interested party on-site or over the Internet. Quarterly update requirements are recommended in order to maintain the integrity and utility of the information. In addition to the items enumerated in Paragraph 180 as necessary data elements for valid registration, a working toll-free telephone

number should be required where any interested party may call to obtain other information about the carrier.

In Paragraph 181, the FCC proposes suspension and revocation powers. The PUCT believes that any carrier that does not follow all of the requirements for registration, files false or misleading information, or engages in unscrupulous, unfair, deceptive, or anti-competitive practice should be subject to suspension or revocation of its operating authority, in addition to monetary penalties. A registration mandate with enforcement authority would add another effective implement to the FCC's enforcement tool box.

The PUCT enthusiastically supports the FCC's tentative conclusion in Paragraph 182 "that a carrier has an affirmative duty to ascertain whether another carrier has filed a registration with the [FCC] prior to offering service to that carrier." Although this Commission has no such rule concerning long distance carriers, the PUCT has an analogous rule in the pay telephone arena. Pursuant to PUC Substantive Rules §23.54(b)(2), LECs in Texas "shall not provide P[ay] T[elephone] A[ccess] S[ervice] to a person required to be registered under this [registration] subsection, unless that person provides a commission-supplied proof of registration." Policing of registration requirements by interstate carriers would provide additional protection for customers. This process is very effective as long as the industry "police" are not also competitors in the same marketplace; otherwise, the opportunity for anti-competitive behavior is practically blessed by the system.

Paragraph 182 also calls for comment on appropriate penalties for "carriers that fail to determine the registration status of other carriers before providing them

with service.” The PUCT believes that a penalty should be imposed to “encourage” cooperation of the wholesaling carriers in policing the registration requirement. This Commission agrees with the FCC “that the penalty should not be as severe as the penalty to be imposed on carriers that fail to file valid registrations.” The penalty for both infractions must be stiff enough to persuade the carriers to comply with the respective requirements, but the penalties should also be proportionate to the severity of the violation (e.g., failure to file a valid registration is far more serious than failure to check for registration.) Again, the PUCT is convinced that the benefits for customers of all of these registration requirements would outweigh any burden placed on the industry.

Finally, in recent months, the major LECs and billing aggregators in Texas have begun to attack the issue of slamming by refusing to continue to bill for resellers that have demonstrated inadequate checks against slamming. The PUCT recommends that the FCC encourage, or preferably require, that underlying carriers, LECS, and billing aggregators or agents deny their services to customer carriers that exceed a minimal frequency or rate of slamming as determined by the FCC.

In conclusion, the PUCT strongly supports the efforts of the FCC to provide customers with additional protections from slamming abuses in the telecommunications marketplace. Since slamming remains the number one complaint of telecommunications customers in Texas, this Commission looks quite favorably upon any procedures established by the FCC to effectively deter and prevent

slamming. However, the PUCT strongly opposes any rule which would preempt the state's ability to address the issue of slamming.

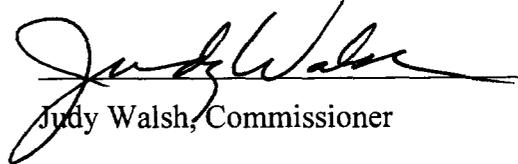
Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue
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March 25, 1999



Pat Wood, III, Chairman



Judy Walsh, Commissioner



Brett A. Perlman, Commissioner